

Guidelines on the
Advance Pricing Arrangement (APA)
For taxpayers

1. Advance Pricing Arrangement

Advance Pricing Arrangement (APA) is an agreement on advance pricing for transactions between intragroup enterprises, which is made upon appropriate methods, criteria, and conditions, under the specified period.

2. Purposes of the APA

Pricing of intragroup transactions may result in inappropriate tax burden. Therefore, to prevent disputes over the pricing of said transactions and to prevent double taxation, taxpayers may apply for a Bilateral Advance Pricing Arrangement (Bilateral APA) for the following purposes:

1. Conformity of pricing of intragroup transactions with the criteria and conditions stipulated by the Thai Revenue Code.
2. Prevention and elimination of double taxation in accordance with the Double Tax Agreement between Thailand and the contracting states.
3. Prevention of tax evasion and avoidance.
4. Promotion of cooperation and mutual understanding between taxpayer and tax authorities.
5. Enabling taxpayers to estimate their tax burden.

3. Application for the APA

Companies or juristic partnerships who are established under the law of Thailand, conduct business with one or more intragroup enterprises situated in a state with which Thailand forms a Double Tax Agreement, and wish to apply for the APA, must submit the letter to the Director-General of the Revenue Department. Please note that the application is exclusively available for the Bilateral APA.

In case where the taxpayer requests that the APA cover accounting periods prior to the APA periods (rollback periods), they must state their purposes and the reasons in their APA application.

During the APA process, if an interpreter or an APA expert is necessary, the applicant is responsible for said arrangement.

4. APA Period

An APA is effective for 3 – 5 accounting periods, whereby the first accounting period must be within or after the date of the APA application.

In case where the applicant requests that the APA cover the rollback periods, said periods must not exceed 2 accounting periods prior to the period in which the APA application is filed. The periods are subject to facts and external factors related to the case.

5. APA request filing process

5.1 APA Pre-Filing Meeting

(1) Purposes of the Pre-Filing Meeting

1. Discussion of the reasons and necessity which the taxpayer files the APA application.
2. Allowing taxpayers to submit preliminary required documents, such as those under (1) - (6) of Article 5.3.
3. Discussion of documents required for the APA application.
4. Determining the date which the taxpayer files the APA application.
5. Reducing the duration of the APA application consideration.

(2) Requesting for the Pre-Filing Meeting

Taxpayers applying for the APA must submit the Pre-Filing Meeting request letter to the Director-General of the Revenue Department (using the form specified by the Revenue Department) at least six (6) months before the final day of the first accounting period of the APA application. Additionally, the documents under (1) – (6) of Article 5.3 must be submitted at least fifteen (15) days prior to the meeting, unless one or more reasonable causes are present.

Example

Suppose a taxpayer wishes to file the APA application for the accounting period ending on 31 December 2010 until the accounting period ending of 31 December 2012. They must request to arrange the Pre-Filing Meeting in writing within 30 June 2010.

Please note that the Pre-Filing Meeting does not constitute any binding agreement.

5.2 APA application

An APA application must be filed to the Director-General of the Revenue Department, attached with documents specified under Article 5.3, before or within the final day of the first APA period. After filing the APA application, the officer of the Revenue Department may arrange a meeting to inquire information related to said application.

Documents specified in the first paragraph submitted to the Revenue Department must be prepared in both Thai and English versions. Three (3) sets of each written document and one (1) set of each electronic document must be submitted.

Example

The taxpayer implements the accounting period beginning from 1 January and ending on 31 December, and wishes to apply the APA from the accounting period ending on 31 December 2010 to the accounting period ending on 31 December 2012. Submitting the APA application is allowed before or within 31 December 2010.

5.3 Preparation of documents for the APA application

The following documents indicating information related to the APA application must be submitted:

(1) Name and address of the taxpayer applying for the APA, as well as the accounting periods covered by the APA.

(2) Business overview of the multinational enterprise (MNE) group of the taxpayer with respect to the APA application (“MNE Group” is defined as a group of multinational companies or juristic partnerships, as stipulated by the Announcement of the Director-General of the Revenue Department No. 408).

(3) Group shareholding structure of associated companies or juristic partnerships conducting businesses with the taxpayer filing the APA application, as well as companies or juristic partnerships categorized as the direct shareholder and the ultimate parent company.

(4) Business description of the companies or juristic partnerships covered by the APA application (Covered Entities):

(4.1) Local organization chart

(4.2) Roles and responsibilities, and the number of staff in each division

(4.3) Value chain

(4.4) Industry overview analysis and market share

(4.5) Key competitors

(4.6) Business strategy, factors contributing to competitive advantages, and key profit drivers of the enterprise and the group enterprises

(4.7) Economic situation

(5) Comparison of financial statements indicating business performance (profit and loss statements) of each covered entity. The comparison must cover five (5) accounting periods prior to the first accounting period of the APA.

Financial data related to the APA application, such as per-segment financial data, methodology of the segment data presented in the APA, BOI/NON-BOI financial data, and/or per-transaction financial information, is also required.

(6) Estimation of financial information for the accounting periods of the APA application whose format corresponds to said application, such as per-segment estimation, etc.

(7) List and characteristics of covered transactions, and pricing policy for each covered transaction specified by the applicant and implemented for the business operation prior to the first accounting period of the APA (if applicable, please specify the transactions between covered entities without including them as covered transactions in the APA application, and explain the reason). The following documents are also required:

(7.1) Per-transaction annual value received from or paid to the contract parties in five (5) accounting periods prior to the first accounting period of the APA.

(7.2) Explanation of each transaction under Article 7.1 and related taxes, such as withholding tax (if applicable).

(7.3) List of contracts related to each transaction under Article 7.2, as well as summary of the contracts and the conditions regarding the contract prices.

(7.4) Review of roles and responsibilities, assets, and risks of the applicants and the contract parties related to the transactions covered in the APA application, as well as significant differences in roles and responsibilities, assets, and risks compared to one (1) accounting period prior to the accounting period of the APA (in case said differences are identified).

(7.5) Financial data used for testing of the transfer pricing methodology chosen for the APA (Tested P/L).

(7.6) Transfer pricing methodology (TPM) of the APA, reasons for adoption of said TPM, proof for or against adoption of said TPM for each transaction, and other proven TPMs. As per needed for each TPM, please specify the contract parties of the covered transactions which are the basis of the TPM testing.

(7.7) Details, process, methodology, and result of the benchmarking study, as well as the list and descriptions of internally comparable non-covered transactions, and information related to the financial indicators of the internally comparable independent transactions, as well as the range of expected returns in case of independent transactions.

Please include the descriptions on search method and sources of independent transactions, or internally comparable independent companies or juristic partnerships, as well as reasons to reject the comparisons.

(7.8) Critical assumptions. Since the Arm's Length Price/Range presented by the taxpayer is based on past facts, in order to estimate the future price or profit rate, it is necessary to determine the assumptions indicating which variables may significantly influence the price or profit rate. These variables include market or competitions, business structure, exchange rates, interest rates, accounting policy, and government policy, all of which are potentially the basis for cancellation or revocation of the APA.

(8) Descriptions of business restructuring of associated companies or juristic partnerships occurring on one (1) accounting period prior to the first accounting period of the APA, and differences on business operations and strategies between pre-restructuring and post-restructuring, as well as effects on the business performance of the applicant (if applicable).

(9) Descriptions of transfer of intangible assets, or proofs of reception from or transfer to associated companies or juristic partnerships one (1) accounting period prior to the first accounting period of the APA, as well as effects on the business performance of the applicant (if applicable).

(10) History and status of summons-based tax audits, and audits of transfer pricing within five (5) accounting periods prior to the APA application.

(11) Supportive information proving that facts and external factors of the rollback periods are internally comparable with the accounting periods of the APA application (in case where the applicant requests that the APA cover the rollback periods).

(12) Description of accounting standards or methodology, in case where the accounting standards of Thai companies and associated firms are different. Financial statements of the applicant are also required.

(13) Legal provision of government agencies influencing the transfer pricing, such as potentially related pricing rules stipulated by the Ministry of Commerce.

(14) Other documents requested by the Revenue Department (if applicable).

5.4 Notification of the APA consideration result

After the taxpayer has filed the APA application and submitted all documents under Article 5.3, the Revenue Department will conduct a preliminary examination of the application and notify the result to the taxpayer. However, in case where the Revenue Department determines that the APA application falls within the criteria under Article 7, it may reject the request after notifying the preliminary examination result.

6. Cooperation of the taxpayer during the consideration of the APA application

During the APA process, the Revenue Department examines and analyzes the data submitted under Article 5.3 by the taxpayer, as well as other related information. Therefore, the taxpayer is required to cooperate with the Revenue Department on matters such as providing additional within the specified duration, or attending the meeting upon being requested by the Revenue Department, etc.

In case where the taxpayer submits the documents to any foreign taxation authority, they must also submit said documents to the Revenue Department within seven (7) days since the date of submission of documents to the foreign taxation authority.

7. APA application rejection criteria

The Revenue Department will consider rejecting an APA application if it falls under any of the following conditions:

1. The taxpayer fails to adequately provide information for the consideration.
2. The APA application has been rejected by related foreign tax authority.
3. The business is recently established, and the database in Thailand is inadequate.
4. There are one or more reasonable suspicions that tax evasion/avoidance or other abnormal actions unrelated to the business is attempted.
5. The taxpayer has previously failed to comply with the APA.
6. Other reasons which the Revenue Department may reject the APA application, such as:
 - Failure to submit the APA annual report without an appropriate reason.
 - The transactions are insignificant compared to intragroup transactions with another jurisdictions.
 - No risk in pricing is present.

In case where the Revenue Department determines that the APA application falls under any of the above criteria, it may reject said application before the bilateral APA with the foreign taxation authority is concluded.

In addition to the above criteria, the Revenue Department may consider the rejection of the APA application covering the rollback periods if facts and external factors in said rollback periods are not internally comparable with those in the accounting periods of the APA application.

8. Withdrawal of the APA application

Taxpayers may withdraw the APA application by notifying to the Director-General of the Revenue Department in writing before the date which the APA comes into the effect.

9. Notification of the APA application result

After the Revenue Department and the foreign taxation authority have concluded the bilateral APA, the Revenue Department will notify the result to the taxpayer via a written letter, so that the taxpayer may comply to the APA. The notification letter contains information as follows:

(1) Information of the taxpayer(s) covered by the APA, such as name, address, and taxpayer identification number.

(2) Information of the APA:

(2.1) APA period

(2.2) Covered transactions

(2.3) Transfer pricing methodology

(2.4) Arm's Length Price/Range

(2.5) Critical assumptions

(2.6) Deadlines for the submission of reports which indicate that the taxpayer has filed the corporate income tax return based on the APA of each accounting period (APA Annual Report)

(3) Other information (if applicable)

10. Termination of the APA

Termination of the APA shall follow the duration specified in the APA notification letter. However, the Revenue Department may consider the cancellation or revocation of the APA if there is a reason which results in early termination of the APA, such as:

1. The taxpayer fails to correctly and adequately provide documents or information.
2. The taxpayer fails to comply with the criteria, methods, and conditions stipulated by the APA.
3. The taxpayer refuses to cooperate with the Revenue Department.
4. Either the taxpayer, the Revenue Department, or the foreign taxation authority requests for amendment, cancellation, or revocation of the APA.
5. One or more occurrences influence the conditions or critical assumptions specified in the APA.
6. One or more laws or conventions related to the APA are amended.

In case where one or more events which may result in cancellation or revocation of the APA occur, the Revenue Department will notify the taxpayer in writing, so that the taxpayer may provide explanations, or file a dispute within the specified duration prior to the consideration on cancellation or revocation.
