

## GUIDELINE ON APA PROCESS

## **1. Advance Pricing Arrangement**

Advance Pricing Arrangement (hereinafter referred as 'APA') is an agreement concerning 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**

Because pricing between intra-group companies' transactions may result in excessive tax burden, therefore, in order to avoid any potential disputes from such procedures and to prevent problems of double taxation, the taxpayer may apply for Bilateral APA in order to:

- ensure that the APA is consistent with rules and regulations stated under 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 a juristic partnership incorporated under the Thai law engaging into intra -group transactions with affiliates who are residents of Thailand's treaty partners, and intend to apply for APA may do so by submitting a written document of intent (APA proposal) directly to the Director-General of the Revenue Department. In this case, only the Bilateral APA will be accepted.

If the taxpayer has an intention to apply terms and conditions stated under the APA on the accounting periods prior to the accounting periods of the APA (The "Roll Back"), the taxpayer has to explain their intention together with reasons of necessity at the starting of each APA application.

In the process of an agreement of the APA, if there is a need for a translator or an expertise, this responsibility is on the taxpayer.

## **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.

In case the APA arrangement covers the accounting periods prior to the accounting periods under the APA arrangement (The Roll Back), the Roll Back can be

applied not more than 2 accounting periods prior to the accounting periods under the APA arrangement requested. This is, nevertheless, subjected to facts and circumstances of each individual taxpayer.

## **5. Process of the APA application**

### **5.1 Pre-filing Meeting**

#### (1) Objective of Pre-filing Meeting

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

#### (2) Pre-filing Meeting Application

The taxpayer who intend to apply for the APA must submit a written document of intent to the Director-General of the Revenue Department at least 6 months prior to the last day of the first accounting period. The documents as stated in 5.3 (1)-(6) have to be submitted to the Revenue Department 15 days prior to Pre-filing Meeting. Exception regarding delayed submitting may only be given due to reasonable cause.

#### Example:

If a taxpayer intends to apply for the APA for an accounting period ending 31<sup>st</sup> December 2010 to 31<sup>st</sup> December 2012, the document of intent has to be submitted to the Revenue Department by 30<sup>th</sup> June 2010.

However, it should be noted that Pre-filing Meeting is not legally binding for all APA parties.

### **5.2 APA Application**

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

Five copies of all related documents shall be submitted in both Thai and English languages. One electronic format is also required to be submitted,

#### Example:

If a taxpayer who has the accounting period starting 1<sup>st</sup> January to 31<sup>st</sup> December and intends to apply for the APA for the accounting period ending 31<sup>st</sup>

December 2010 to accounting period ending 2012, the APA application should be submitted before or within 31<sup>st</sup> 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 the taxpayer who intend to apply for the APA together with details regarding the accounting periods of the entity and the transactions covered under the APA

2) Structure and relationships of related parties. Details of types of business of the related parties and shareholders

3) Details of business' sales and turnover, for instance, by transaction or by customer and types of business transactions of related entities. Pricing policy and reasons of using such pricing policy are required

4) Detailed analysis of business's functions, assets and risks of all transactions

5) Detailed analysis of industrial structures and market share.

6) Transfer Pricing Methodology (TPM) selected for the APA and the reason for such selection.

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 future business profits, it is important to state hypothesis concerning factors which may affect price or profits range significantly such as market conditions or market competition, business structure, currency exchange, interest rates parity, accounting policy or government policy. These factors may result in the cancellation or revocation of the APA

9) History and status of audits subject to summons. Audit related to transfer pricing transactions within the past 5 accounting periods before the APA application.

10) Any supporting information indicate that facts and circumstances during the Roll Back period are comparable to the periods covered by the APA (If the taxpayer shows the intention to apply APA terms and conditions to the Roll Back period)

11) Any other relevant documents, if any, for example:

- Accounting standard or accounting procedures in case accounting standard of Thai entities and related entities are different

- Rules and regulations of government organization that could affect pricing

12) Other documents requested by the Revenue Department.

#### **5.4 APA Application Acceptance Notice**

After the taxpayer completely submits the APA application and documents stated in 5.3, the Revenue Department will perform initial consideration and notify the result of the consideration to the taxpayer. However, if the Revenue Department views that the APA application is subjected to the criteria under section 7, the Revenue Department may reject the APA application even after the initial notification.

#### **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 such as supplying additional information within a reasonable time, or attending meetings with the Revenue Department officials as required.

Any documents related to APA, which taxpayers provide to the foreign tax authority, 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. Criteria for the rejection of the APA Application**

The Revenue Department may reject the APA application if the application is subjected to the following criteria:

- 1) The taxpayer did not submit sufficient information for APA consideration.
- 2) The APA application has been rejected by other foreign tax administrations related to the APA application.
- 3) The taxpayer's business is new and there is insufficient information in the Thai market
- 4) There are evidences of or suspicions over tax avoidance or other unusual activities without business reasons.
- 5) There are evidences of non-compliance with regard to the APA arrangement
- 6) Other reasons in which the Revenue Department may reject the APA such as;

- Do not submit an annual compliance report for the APA without reasonable causes

- Insignificant business transactions as compared to their business transactions with other countries

- No transfer pricing risks

If the APA application is subjected to at least one of the above criteria, the Revenue Department may reject the APA application anytime before the Revenue Department and the foreign tax authority conclude the APA agreement.

Notwithstanding the abovementioned criteria, the Revenue Department may reject the Roll Back if facts and circumstances of the taxpayer during the Roll Back period are incomparable to the facts and circumstances during the APA arrangement period.

#### **8. Withdrawal of the APA Application**

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

#### **9. Announcement of APA Conclusion**

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

The notice generally provides:

- 1) Details of the taxpayer's information such as name, address, the taxpayer's identification number
- 2) Details of the APA's terms and conditions:
  - 2.1 The APA Period
  - 2.2 Covered Transaction
  - 2.3 The Transfer Pricing Methodology
  - 2.4 Arm's Length Price/Range
  - 2.5 Critical Assumptions
  - 2.6 Time frame for the APA Annual Report Submission as to indicate that the taxpayer has filed Corporate Income Tax according to the APA and within the APA Annual Report
- 3) Other details, if any

#### **10. Termination of APA**

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

- 1) The taxpayer provides incorrect or insufficient information.
- 2) The taxpayer does not comply with regulation, procedure, and conditions of the APA.
- 3) The taxpayer refuses to cooperate with the Revenue Department.
- 4) The taxpayer or the Revenue Department requests for amendment, cancellation, or withdrawal of the APA.
- 5) Circumstances that affect the conditions or assumptions stated under the APA.
- 6) Any amendments of domestic laws and international agreements which regard to the APA.

In this regard, the Revenue Department shall notify the taxpayer with a written letter in advance, allowing the 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.**