

Taiwan Tax Update

November 2021

Income Tax Act

Ministry of Finance Issued Operational Guideline Governing Review of Advance Pricing Agreement Cases by National Taxation Bureaus (“APA Assessment Guidelines”)

On November 1, 2021, the Ministry of Finance (“MOF”) issued the APA Assessment Guidelines (formerly named Operational Guideline Governing Profit-seeking Enterprise's Application of APAs), which incorporates historical APA related amendments in Regulations Governing Assessment of Profit-Seeking Enterprise Income Tax on Non-Arm's-Length Transfer Pricing (“TP Assessment Rules”) and provides a consistent approach for all National Taxation Bureaus (“NTBs”) to review APAs.

Salient points of the APA Assessment Guidelines are summarized as follows:

Item	Description
Application Qualifications	If transactions undertaken by a profit-seeking enterprise with its related parties satisfy the following criteria, the enterprise may file an APA application with the competent NTB to negotiate the arm's length transaction result: <ol style="list-style-type: none">1). Transaction amount:<ol style="list-style-type: none">i. Total transaction amount is equal to or exceeds NT\$500 million; orii. Annual transaction amount is equal to or exceeds NT\$200 million.2). No significant tax evasion in past three years.
Application Deadline	APA application should be submitted prior to the end of the first fiscal year covering the controlled transactions; Pre-filing meeting application can also be submitted three months before the end of the first fiscal year.

<p>Application Process (involving NTBs)</p>	<ol style="list-style-type: none"> 1). If the APA application is submitted to the competent NTB prior to the end of the first fiscal year covering the controlled transactions, the NTB should inform the applicant in writing whether it agrees to review the APA application within a month. 2). Pre-filing meeting application: The NTB should notify the applicant (or its agent) the time and place for the pre-filing meeting within a month after the pre-filing meeting application submission date. The pre-filing meeting should be conducted within 3 months after the pre-filing meeting application submission date, and written notice should be given to the applicant (or its agent) as to whether the NTB agrees to go ahead with the review of the APA application. 3). Pursuant to the TP Assessment Rules, profit-seeking enterprises should provide relevant documents and reports supporting the pricing method within 3 months after the delivery date of the written notice mentioned in 1) or 2) above. 4). Within 1 year after receiving documents and reports (or documents and reports filed along with amendment applications) as requested by TP Assessment Rules, the NTB's assessment team should review and conclude via an assessment report. The assessment report should be reviewed by the NTB's APA Assessment Committee. 5). If the applicant's transaction counterparty is domiciled in a jurisdiction governed by another NTB, it should first contact and seek advice from the other NTB, and then submit documents to the NTB assessment team for evaluation. 6). If due to special conditions, the NTB needs to extend the assessment period, it should notify the applicant (or its agent) before the end of the standard assessment period. In general, the assessment period cannot be extended for more than 6 months. Thereafter, if necessary, the assessment period can only be extended for another 6 months. 7). When the case is approved by the APA Assessment Committee, the NTB's assessment team should record the conclusion and report it to the director-general of the NTB, then conduct discussion with the applicant (or its agent) within 6 months after the conclusion has been approved. After an agreement is reached between the applicant (or its agent) and the NTB, the APA should be mutually signed and executed in accordance with the TP Assessment Rules. Whereas, if mutual consensus cannot be reached based on assessment made by the APA Assessment
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	<p>Committee, the NTB should submit a written notice to the applicant (or its agent) accordingly.</p> <p>8). In case the participants in the controlled transactions covered by the APA, and the applicant's direct parent company and ultimate parent company are located in a tax treaty country, the NTB should submit a written notice to International Fiscal Affairs of the MOF within 30 days after the APA is signed and executed.</p>
Renewal Application	APA renewal application can be filed before the expiry of the original approval period. However, the renewal period shall not exceed 5 years.
Others	For cases involving cross-border bilateral or multilateral APAs, a mutual agreement procedure application should be filed with the competent authority of the other Contracting State in accordance with the applicable tax treaty.

PwC View:

APA is the primary tool for multinational enterprises to achieve tax certainty in terms of controlled transactions and reduce TP compliance cost. In comparison with dedicated TP audits or litigation, APAs can more efficiently resolve TP related issues.

PwC Reminder:

In terms of APA application, the following items should be noted:

1. **Before APA application is submitted:** Confirm ultimate goal and evaluate feasibility of APA application; select appropriate type of APA and associated application process. Prepare APA application documents in advance, summarize other APA cases with similar conditions, evaluate hot topics that may arise subsequently during negotiation, and conduct necessary informal communications with the competent NTB.
2. **After APA application is submitted but before formal acceptance by NTB to review APA application:** Actively respond to NTB's analysis/evaluation and function/risk interviews, maintain smooth communication with the NTB, and listen to the NTB's opinion.
3. **During negotiation with NTB after formal acceptance to review APA application:** Actively discuss key topics with the NTB, fully understand the NTB's requirement towards supplemental explanation content, prepare relevant supporting documents, and provide

prompt feedback.

4. **After consensus is reached:** Monitor closely related party transactions, financial information, and relevant functions and risks. In case there is a change in agreement terms, one should notify and communicate with the NTB immediately.

MOF released amendments to Regulations Governing Reduction and Exemption of Income Tax of Foreign Special Professionals

On October 28, 2021, the MOF officially released amendments to Regulations Governing Reduction and Exemption of Income Tax of Foreign Special Professionals. The official amended regulations are similar to that of the draft amendment released previously. Please refer to the following link for relevant highlights:

[PwC Taiwan Tax Update: September 2021 \(pwc.tw\)](#)

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