

PRODUCT

MARCH 2011

UNCLASSIFIED

FORMAT

AUDIENCE

DATE

CLASSIFICATION



Australian Government

Australian Taxation Office

FILE REF:

Model Simplified Unilateral APA

Product linked to the Practice Statement Law Administration
PS LA 2011/1



UNCLASSIFIED



1. Parties to the Unilateral Advance Pricing Arrangement (APA)

The parties to the unilateral APA are the Australian Taxation Office (ATO) and:

Company Name: Example Australia Pty Ltd

Address: xxxxxxxxxxxxxxxxxxxxxxxxx

2. Period and income tax years covered by the Unilateral APA renewal

The term of the unilateral APA is five years commencing on 01 January 20XX and concluding on 31 December 20XX.

3. Covered transactions

Example Australia Pty Ltd imports, markets and distributes XXXX into the Australian market.

The following transactions between Example Australia Pty Ltd and Example Inc. will be covered by the application of the transfer pricing methodology described in paragraph 4 below:

- purchase of products from Example Inc.
- purchase of parts and accessories from Example Inc.
- provision of warranty services to end users by Example Australia Pty Ltd on behalf of Example Inc.

4. Agreed Transfer Pricing Methodology

The parties have agreed to calculate the consideration given by Example Australia Pty Ltd for property acquired from Example Inc. in accordance with the arm's length principle.

The methodology for applying the arm's length principle is the Transactional Net Margin Method (TNMM). The profit level indicator (PLI) to be used is an Earnings before Interest and Taxes (EBIT) to Net Sales (referred as the EBIT margin). The methodology shall be applied in the following manner:

- a) This methodology shall allow Example Australia Pty Ltd to achieve an annual return in the range of XX% to YY% in the income years from 20XX to 20XX.
- b) Calculation of the annual return shall be made by reference to the EBIT margin of Example Australia Pty Ltd, as defined below:
 - (i) EBIT is defined as net profit before interest, dividend income, gains/losses on sale of fixed assets, restructuring expenses, other non-operating items and income tax calculated in accordance with Australian equivalents to International Financial Reporting Standards (AIFRS).

- (ii) Sales shall mean total sales less returns and allowances calculated in accordance with AIFRS.

5. Procedures for compensating adjustments

As outlined in the compensating adjustments section of Chapter 8 of PS LA 2011/1 subject to the satisfaction of the critical assumptions outlined in Clause 6 below, Example Australia Pty Ltd will make any compensating adjustments at the conclusion of the year that are necessary to reflect the application of the arm's length principle in the form of an adjustment.

- a) **Shortfall:** In the case that Example Australia Pty Ltd's actual EBIT margin is less than XX per cent (the lower boundary of the arm's length range described above), there shall be deemed to exist a 'shortfall' in the compensation earned by Example Australia Pty Ltd by an amount equal to the difference between Example Australia Pty Ltd's actual EBIT margin and XX per cent in any year of the APA.
- b) **Excess:** In the case that Example Australia Pty Ltd's actual EBIT margin is greater than YY per cent (the upper boundary of the arm's length range described above), there shall be deemed to exist an 'Excess' in the compensation earned by Example Australia Pty Ltd by an amount equal to the difference between Example Australia Pty Ltd's actual EBIT margin and YY per cent in any year of the APA.

- c) **Compensating adjustment:**

In the event of any shortfall in any one year, the deduction for purchases or services shall be reduced by such an amount as is sufficient to produce an EBIT margin of XX per cent. Any adjustment will be reflected in Example Australia Pty Ltd's income tax returns.

In the event of any excess in any one year, the deduction for purchases or service fees shall be increased by such an amount as is sufficient to produce an EBIT margin of YY per cent.

In this circumstance, an amount equal to the increased deduction made for purchases shall be included in the income of the related party supplier to ensure compliance with the intention of the Convention between the Government of Australia and the Government of the XXX for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income.

6. Critical assumptions

The guidelines for the administration of the APAs are set out in PS LA 2011/1. The critical assumption section of Chapter 8 of this practice statement states: 'An APA will define in advance those critical factors and assumptions that are so significant that neither party in an arm's length situation would continue to be bound, if any of them changed'.

The following matters represent the critical assumptions for the purpose of this APA:

- (a) Example Australia Pty Ltd business activities, functions performed, assets employed, risks assumed and financial accounting methods and classifications shall remain materially the same as that described in the APA documentation provided.
- (b) There will be no changes or factors materially impacting the industry in which Example Australia Pty Ltd operates.
- (c) There will be no changes to Example Australia's product or customer base that may materially impact on the Australian business.
- (d) There will be no changes to any governmental regulations, controls or mechanisms that materially impact the Australian business.

7. Revision of the APA

As outlined in the critical assumptions section of Chapter 8 of PS LA 2011/1 Example Australia Pty Ltd agrees to notify the ATO when it becomes aware that a breach of critical assumptions has taken place. If Example Australia Pty Ltd becomes aware of such a breach during the financial year giving rise to the event then Example Australia Pty Ltd will advise the ATO of the change as soon as possible during that financial year. If Example Australia Pty Ltd becomes aware of the change subsequent to the end of the financial year giving rise to it, then it will advise the ATO of the change as soon as possible after it becomes aware of the change.

A breach of a critical assumption will result in a review of the terms of the APA. Subject to agreement between the parties, this may lead to either:

- a) revision of the APA
- b) modification of the APA
- c) suspension of the APA, or
- d) cancellation of the APA.

8. Annual Compliance Reporting

In accordance with the Annual Compliance Report section of Chapter 8 of PS LA 2011/1 Example Australia Pty Ltd shall lodge an Annual Compliance Report summary document with the ATO at the same time as lodging the annual income tax return.

The Annual Compliance Report shall include the following:

- (a) A copy of the audited financial statements of Example Australia Pty Ltd including a detailed profit and loss account and balance sheet for the relevant APA year.
- (b) Calculations of the taxable income figure including full details of all tax reconciliation adjustments for the relevant APA year.

- (c) A copy of the Schedule 25A or the International Dealings Schedule reporting the international related party dealings covered by the APA and a reconciliation of any differences between amounts on that schedule and the corresponding amounts in the statutory financial statements for the relevant APA year.
- (d) Information and computations necessary to ascertain the outcome of the transfer pricing methodology for the covered dealings between Example Australia Pty Ltd and Example Inc for the APA year, demonstrating the extent of compliance with the transfer pricing methodologies and other terms and conditions of the APA.
- (e) An analysis of any compensating adjustment required under the APA, and a detailed description of the manner in which the adjustment was effected.
- (f) A description of any material changes in financial or tax accounting methods or principles employed for the APA year in respect of the covered dealings, which differ from the financial or tax accounting methods employed and reflected in the APA request, and if in Example Australia Pty Ltd's opinion, there were no such material changes, an affirmative statement to that effect.
- (g) A description of any new international related party dealings of a material amount that are not covered by the existing terms and conditions of the APA.
- (h) A statement as to whether Example Australia Pty Ltd has operated within the critical assumptions detailed in Paragraph 6 of this APA.
- (i) A statement demonstrating how Example Australia Pty Ltd is actively targeting the agreed EBIT margin range in the setting of transfer prices.

The Annual Compliance Report may be sent via e-mail (preferred method) or post to:

tpgatekeeper@ato.gov.au	or	Transfer Pricing Gatekeeper
		Australian Taxation Office
(File size cannot exceed 6MB)		GPO Box 9977
		MELBOURNE VIC 3001

The ATO will review the Annual Compliance Report and, if necessary, may request further information that is reasonably needed to verify that Example Australia Pty Ltd has complied with the terms and conditions of the APA.

If Example Australia Pty Ltd fails to provide the Annual Compliance Report or supply the additional information requested within a reasonable time, the ATO may cancel the APA.

9. Confidentiality

Example Australia Pty Ltd considers that the information requirements for APAs are significant and they include a variety of sensitive and confidential business information.

Example Australia Pty Ltd and the ATO recognise that the ATO is legislatively bound by the *Privacy Act 1988*, Division 355 of Schedule 1 to the *Taxation Administration Act 1953*, and where relevant the Exchange of Information Article in applicable taxation treaties, to safeguard taxpayer information.

10. Record retention

Example Australia Pty Ltd shall retain all records relied upon in concluding the APA and all supporting data referred to in the annual report, for the period specified in subsection 262A(4) of the *Income Tax Assessment Act 1936*. If requested Example Australia Pty Ltd shall make the APA records available to the ATO within a reasonable time of a written request.

11. Implementation

Example Australia Pty Ltd and the ATO wish to continue their open relationship and Example Australia Pty Ltd should approach the ATO as soon as possible if any events occur that affect the APA. In the event that difficulties, disputes or differences of opinion occur in the implementation of the APA, the ATO and Example Australia Pty Ltd should endeavour to resolve them promptly.

12. Omissions, false or misleading statements

In accordance with the omission or false or misleading statements section of Chapter 11 of PS LA 2011/1, the ATO may review, revise, or cancel the APA where Example Australia Pty Ltd makes a statement that is false or misleading or deliberately omits from a statement any matter or thing without which the statement is false or misleading in either the APA application or any other submission report, information, or documentation regarding or supporting the APA application.

Signed by:

Signed by:

Name _____,
Technical Director, S&ME
For **Australian Taxation Office**

Name,
Public Officer
For **Example Australia Pty Ltd**

Date:

Date: