

PRODUCT

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UNCLASSIFIED

FORMAT

AUDIENCE

DATE

CLASSIFICATION



Australian Government

Australian Taxation Office

FILE REF:

Simplified Unilateral APA Application Template

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



UNCLASSIFIED



This letter and attached information (including appendices) represent the formal application by [applicant's name] to enter into a unilateral Advance Pricing Arrangement (APA) with the Australian Taxation Office.

1. Applicant for the unilateral APA

The applicant for the unilateral APA is:

Name: [applicant's name]

TFN: 12 345 789

Address:

[Applicant's name] is a wholly owned subsidiary of [parent's name] based in [parent's country of residence].

2. Parties to the APA

The parties to the APA will be:-

Australian Entity: [applicant's name]

Taxation Authority: Australian Taxation Office (ATO)

3. Period and income tax years covered by the APA application

The term of the unilateral APA is a [number of years] year period commencing on [date] and ending [date].

4. International related party dealings and agreements covered by the unilateral APA

All international related party dealings of [applicant's name] are covered through the application of a (place here selected transfer pricing methodology) (refer to paragraph 5).

The international related party dealings of [applicant's name] are as follows:

[Provide description of international related party dealings]

[Description of international related party dealing 1]

[Description of international related party dealing 2].

Details of international related party dealings for the year ended [year prior to the first year of proposed APA period] are contained in Appendix 1.

Copies of agreements covering the international related party dealings are contained in Appendix 2.

5. Proposed Transfer Pricing Methodology (TPM)

- (a) [Applicant's name] is characterised as a [functional profile of applicant]. A functional analysis at Appendix 3 supports this characterisation.
- (b) The proposed TPM is the [specify TPM].

[Provide reasons for selection/rejection of various TPM considered. For example:

The Transactional Net Margin Method (TNMM) was selected and applied at a whole of entity basis in consideration of available data, characterisation of the entity and that other methods could not be reliably applied.]

- (c) The Profit Level Indicator (PLI) considered most appropriate to determine the arm's length outcome is the [specify PLI].

[Provide here key definitions for the methodology. For example:

EBIT is defined as net profit before interest, dividend income, gain/loss 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).

Sales shall mean total sales less returns and allowances calculated in accordance with AIFRS.]

- (d.1) Based on the arm's length profit range determined from the ATO benchmarking analysis, it is proposed that [applicant's name] will achieve an arm's length EBIT margin in the range XX% to YY% over the term of the unilateral APA.

[Note that for taxpayers who are classified as distributors or service providers the ATO will provide an arm's length benchmarking analysis that may be used with this application, however a taxpayer may choose to prepare their own benchmarking analysis. The ATO will provide reasonable assistance to an eligible taxpayer other than a distributor or service provider in preparing an arm's length benchmarking analysis.]

[Or, where the applicant proposes to rely on its own transfer pricing analysis.]

- (d.2) A detailed economic analysis, outlining the selection/rejection of TPM and application of the selected TPM is located in Appendix 4.

[For example:

Based on this economic analysis the selected TPM is the TNMM and [applicant's name] proposes to achieve an arm's length EBIT margin in the range XX% to YY% over the term of the unilateral APA.]

6. Critical assumptions

The following have been identified as critical factors that would significantly impact on the ability of [applicant's name] to continue to meet the terms and conditions of the APA:

- a) There will be no substantial change in the nature, scope and extent of the business operations of [applicant's name] from that described in this APA application that will materially affect the ability of [applicant's name] to meet the required outcomes for the APA.
- b) *[other assumptions subject to discussion]*

7. Revision of the APA

As outlined in the critical assumptions section of Chapter 8 of PS LA 2011/1, [applicant's name] agrees to notify the ATO when it becomes aware that a breach of critical assumptions has taken place. If [applicant's name] becomes aware of such a breach during the financial year giving rise to the event, then [applicant's name] will advise the ATO of the change as soon as possible during that financial year. If [applicant's name] 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. Compensating adjustments

- a) It is expected that on a year by year basis there may be minor variations in profit outcomes of [applicant's name].
- b) Unless a critical assumption is triggered (refer to Clause 6), [applicant's name] is to make necessary adjustments, in its related party dealings to achieve the arm's length consideration.
- c) The compensating adjustment shall be paid to the other entity or entities within thirty (30) days of the year end of the paying entity to which the compensating adjustment relates.

9. Annual Compliance Reporting

In accordance with the Annual Compliance Report section of Chapter 8 of PS LA 2011/1 [applicant's name] will lodge an Annual Compliance Report (ACR) summary document with the ATO at the same time as lodging the annual income tax return.

The ACR shall include the following:

- (a) A copy of the audited financial statements of [applicant's name] including a copy of the detailed profit and loss account 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 covered international related party dealings for the relevant APA and an accounting of any differences between amounts required to be reported by [applicant's name] on that schedule and the corresponding amounts reported by [applicant's name] in their 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 for [applicant's name] 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 adjustments required under the APA, and a detailed description or the manner(s) in which the adjustments were 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 [applicant's name]'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 which are not able to be covered by the existing terms and conditions of the APA.
- (h) A statement whether [applicant's name] has operated within the critical assumptions detailed in Paragraph 6 of this APA.
- (i) A statement demonstrating how [applicant's name] is actively targeting the agreed EBIT rate in the setting of transfer prices.

The Annual Compliance Report should 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

10. Confidentiality

[Applicant's name] considers that the information requirements for APAs are significant and they include a variety of sensitive and confidential business information.

[Applicant's name] 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.

11. Record retention

[Applicant's name] 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 [applicant's name] shall make the APA records available to the ATO within a reasonable time of a written request.

12. Public Officer's declaration

I declare that I have examined the attached APA application, including accompanying documents, and to the best of my knowledge and belief, the facts presented in support of the application are true, comprehensive and accurate.

[Public Officer's name]
Public Officer
[Applicant's name]

Appendix 1: International related party dealings

[Insert details of the international related party dealings for the year prior to the APA]

Appendix 2: International related party agreements

[Insert copies of all international related party agreements here]

Appendix 3: Functional analysis

1. Background
2. Industry analysis
3. Functional analysis
 - 3.1. Functions performed
 - 3.2. Assets employed
 - 3.3. Risks assumed
4. Conclusion

Appendix 4: Economic analysis

This appendix is required to be completed where the applicant proposes to rely on its own transfer pricing analysis rather than relying on the ATO's benchmarking analysis.

1. Characterisation of international related party dealings
2. Selection of TPM or reason for rejection
 - 2.1. Comparable Uncontrolled Price (CUP) Method
 - 2.2. Resale Price (RP) Method
 - 2.3. Cost Plus (CP) Method
 - 2.4. Profit Split (PS) Method
 - 2.5. Transactional Net Margin Method (TNMM)
3. Application of the TPM selected
4. Financial analysis
5. Conclusion