PS LA 2015/4 - Advance Pricing Arrangements

This cover sheet is provided for information only. It does not form part of *PS LA 2015/4 - Advance Pricing Arrangements*

This document has changed over time. This version was published on *29 October 2025*

Generated on: 21 November 2026, 12:00:54 AM

PS LA 2015/4
Advance pricing arrangements

This Law Administration Practice Statement provides guidance to staff on advance pricing arrangements.

This Practice Statement is an internal ATO document and is an instruction to ATO staff.

Taxpayers can rely on this Practice Statement to provide them with protection from interest and penalties in the following way. If a statement turns out to be incorrect and taxpayers underpay their tax as a result, they will not have to pay a penalty, nor will they have to pay interest on the underpayment provided they reasonably relied on this Practice Statement in good faith. However, even if they do not have to pay a penalty or interest, taxpayers will have to pay the correct amount of tax provided the time limits under the law allow it.

1. What this Practice Statement is about

1A. This Practice Statement sets out the Commissioner of Taxation's practice and procedures and provides guidance to ATO staff in dealing with requests from taxpayers to enter into an advance pricing arrangement (APA).

1B. While this Practice Statement deals primarily with APA requests covering cross-border dealings between separate entities, we are also to apply the principles in this Practice Statement to requests for APAs involving the attribution of profits to permanent establishments.

1C. All legislative references in this Practice Statement are to the *Income Tax Assessment Act 1997*, unless otherwise indicated.

2. What is an advance pricing arrangement

2A. An APA is[1]:

> … an arrangement that determines, in advance of controlled transactions, an appropriate set of criteria (e.g. method, comparables and appropriate adjustments thereto, critical assumptions as to future events) for the determination of the transfer pricing for those transactions over a fixed period of time.

2B. An APA is entered into by:

- in the case of a unilateral APA, the ATO and the taxpayer
- in the case of a bilateral APA, the competent authority (CA) of the relevant tax administration and the ATO CA
- in the case of a multilateral APA, the CA of each of the relevant administrations and the ATO CA.

2C. An APA deals with conditions operating between entities that satisfy the cross-border test in subsection 815-120(3) (cross-border dealings). The term of an APA will usually be between 3 and 5 years.

3. Context for entering into an advance pricing arrangement

3A. Many Australian-based entities participate regularly in the ever-evolving dynamic market that is world trade. Multinational entities and cross-border dealings are critical to this global dynamic. As a necessary consequence, there has been an increasing focus and emphasis on transfer pricing and its impacts for revenue authorities. We recognise that taxpayers face transfer pricing risks internationally and domestically. In particular, Australian-based taxpayers face transfer pricing risks given Australia's transfer pricing rules are self-executing as part of the self-assessment regime.

3B. Charged with administering Australia's tax system, we also face risks posed by profit shifting and transfer pricing. By entering into APAs, we place an explicit emphasis on assuring Australia's tax base by working with Australian taxpayers to ensure transfer pricing outcomes are reflective of the true economic contribution made by the Australian-based enterprise.

3C. The ATO and most taxpayers will seek to manage and mitigate our respective transfer pricing risks. APAs provide an opportunity for all parties, on a prospective basis, to mutually manage and achieve certainty on transfer pricing risks. The APA should provide a pragmatic means to agree to an arm's length outcome for the Australian entity and for us having regard to the totality of the cross-border dealings between the entities involved, which is consistent with the transfer pricing legal framework. Staff are to be

[1] Paragraph 4.134 of OECD (2017) *OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations 2017*, OECD Publishing, Paris.

mindful of this context during the APA process, including reviews of annual compliance reports (ACR).

4. Reasons for entering into an advance pricing arrangement

4A. The core objective of an APA is to provide taxpayers who have a positive compliance record with a cooperative compliance program to attain tax certainty on transfer pricing outcomes for significant international related party dealings, where the risk of double taxation is high. In so doing, we commit to fostering constructive working relationships with mutual trust through early engagement, and full and frank disclosure.

4B. APAs provide tangible benefits by decreasing the costs of compliance over the term of an APA.

4C. APAs are a pragmatic strategy that foster cooperative tax compliance and prevent escalation of transfer pricing issues into disputes. An APA channels resources towards a preventative mechanism rather than a reactive one, such as an audit. Hence, an APA delivers further cost savings to the tax system.

4D. APAs are part of our:

- focus on proper tax administration
- program of providing taxpayers with advice, and
- maintenance of tax system integrity through its assurance work.

4E. APAs give taxpayers the opportunity to reach agreement with us on the application of one or more transfer pricing methods to ensure consistency with the arm's length principle to their covered cross-border dealings on a prospective basis. APAs can assure us that the taxpayer's actual conditions, that operate in connection with their commercial or financial relations, are consistent with the arm's length conditions on a prospective basis.

4F. Entering into bilateral or multilateral APAs:

- minimises the potential for double taxation
- reduces the need to enter mutual agreement procedure (MAP) negotiations to eliminate economic double taxation
- provides greater certainty, and
- reduces the cost of compliance for all stakeholders.

4G. During the course of an APA, other interconnected non-transfer pricing tax issues can be discussed, and where resolution of those tax issues is reached with the taxpayer, it will be formalised outside of the APA.

5. Mutual expectations when developing advance pricing arrangements

5A. The APA process is a cooperative one, requiring mutual trust between the parties to achieve an effective and efficient outcome and maximise future tax certainty, through professional, respectful and timely interactions.

5B. Taxpayers seeking to engage in the APA process can expect us to:

- consider each APA application on its merits according to its own facts, and apply principles consistently to ensure fair and reasonable outcomes
- adhere to the APA program scope, including providing clear and timely communication around concerns that may require the application of the exit principles
- adhere to the APA program timeframes
- facilitate regular and timely communication with taxpayers
- facilitate regular and timely communication with treaty partner competent authorities
- seek to coordinate the information-gathering process with treaty partners where possible to limit duplication
- request information that is relevant to the proposed covered transactions or collateral issues
- handle provided information in accordance with ATO secrecy obligations and principles
- review information provided efficiently, with ongoing taxpayer engagement to ensure mutual understanding of information received
- maintain mutual trust through full and frank disclosure, and negotiation in a cooperative environment.

5C. Taxpayers seeking to engage in the APA process are expected to:

- provide a full and complete early engagement form and APA submission, disclosing all relevant facts in all participating jurisdictions
- adhere to the APA program timeframes
- maintain regular, open communication with us
- provide timely and complete responses to information requests and, where required, the relevant source documents
- provide documents that meet the appropriate standard of evidence to substantiate transfer pricing analysis

- for bilateral and multilateral APAs, provide information to both treaty partners contemporaneously and concurrently where possible
- proactively disclose any change in circumstances during the APA process
- maintain mutual trust through full and frank disclosure.

5D. While regular and open communication is required between the taxpayer and ATO, taxpayers are not directly involved in the preparation of position papers, interactions with panel members or competent authority negotiations.

5E. Staff are to approach APA requests on this basis. The mutual expectations in paragraphs 5B and 5C of this Practice Statement extend to the discussions on the appropriate resolution pathways for collateral issues (refer to Section 13 of this Practice Statement).

5F. If these mutual expectations are not met, it may be appropriate for us to withdraw from the APA process.

6. When we are more likely to enter into an advance pricing arrangement

6A. Staff are to consider each APA request having regard to all the relevant facts and circumstances in the context described in Section 3 of this Practice Statement.

6B. We may be more likely to enter into an APA where one or more of the following indicators are present:

- The transfer pricing method proposed best achieves consistency with the *OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations 2017* (as amended and adopted as relevant guidance material under section 815-135).
- The proposed arrangement is under serious contemplation[2] and the proposed actual conditions are unlikely to change significantly in the period of the APA.
- The transfer pricing issues are complex and there is uncertainty as to how the transfer pricing rules apply.
- The taxpayer is cooperative and has a good compliance record.
- The probability of economic double taxation is high without an APA.
- The value of the cross-border dealings proposed to be covered are of material significance to the taxpayer, being at least $5 million or 80% of assessable income or deductible expenditure, on average per annum.
- The request is a renewal of an APA.
- The proposed APA is with a jurisdiction where we have a focus on developing a treaty partner relationship, or the transaction addresses emerging trends, or the transactions are of economic significance to Australia's economy.

6C. No one indicator is, of itself, determinative. However, transparency as to the material facts is essential.

7. When we are less likely to enter into an advance pricing arrangement

7A. Following on from Section 6 of this Practice Statement, we may be less likely to enter into an APA where one or more of the following indicators are present:

- The actual conditions are simple or routine with arm's length conditions being relatively certain.
- The cross-border dealings to be covered by the APA are only a small portion of value of the total cross-border dealings.
- The proposed APA would not result in alignment between true economic activity and profit outcomes in Australia.
- Collateral issues exist that affect our ability to enter into the proposed APA.
- The arrangements proposed to be covered or the collateral issues exhibit features that are inconsistent with our publicly stated position on the matter.
- We have concerns that the taxpayer is engaging in tax avoidance activities or schemes.
- There are significant differences in views between the taxpayer and us on the transfer pricing approach, which are unlikely to be reconciled through an APA process.
- The taxpayer requests a unilateral APA where a bilateral or multilateral APA may be more suitable.
- Alternative avenues are available to provide tax certainty which represent a better use of resources or is more suitable than an APA (for

[2] That is, the proposed arrangement will be entered into at a future point.

example, a practical guideline or the justified trust program).

7B. Where a taxpayer meets the eligibility criteria in Practical Compliance Guideline PCG 2017/2 *Simplified transfer pricing record-keeping options* this does not preclude the ATO and the taxpayer from entering into an APA.

7C. The availability of carried forward losses also does not preclude the ATO and the taxpayer from entering into an APA. Where carry forward losses are available to a taxpayer, the APA team is to treat this aspect as a collateral issue (refer to Section 13 of this Practice Statement) and understand the reasons behind those losses being incurred prior to acceptance into the APA program.

8. Potential application of the anti-avoidance provisions

8A. In identifying arm's length conditions, consideration is to be given to factors in addition to pricing. This can include consideration of the global value chain, structures, functions, assets and risks, transfer pricing method, and other similar relevant factors.

8B. The APA team may need to consider whether the cross-border dealings to be covered by the proposed APA might lead to the application of:

- the general anti-avoidance provisions contained in Part IVA of the *Income Tax Assessment Act 1936* (ITAA 1936)[3] including the multinational anti-avoidance law (MAAL) and diverted profits tax (DPT), or
- other specific anti-avoidance provisions, such as the anti-hybrid mismatch rules or a principal or main purposes test included in any of Australia's double-tax agreements.

8C. Where the possible application of Part IVA of the ITAA 1936 or other specific anti-avoidance provisions may arise, the APA team will make further enquiries in the early engagement stage to ascertain the likelihood of the risk.

8D. The APA team is to discuss the resolution of such issues with the taxpayer and factor it into the development of agreed plans (refer to paragraph 10E of this Practice Statement).

8E. Where it is not practicable to resolve a risk relating to an anti-avoidance provision that directly impacts on the covered transactions being considered in the APA:

- during the early engagement stage, the taxpayer will not be invited to make a formal APA submission
- during the APA application stage, we will not proceed with the APA and the matter may be referred internally for further consideration.

9. Stages of the advance pricing arrangement process

9A. The APA process has 3 stages[4]:

- Stage 1 – early engagement
- Stage 2 – APA application
- Stage 3 – monitoring compliance.

9B. An APA request enters an early engagement stage before progressing to a formal APA application. Once the early engagement process is completed and the APA is approved to progress, the taxpayer is invited to make a formal APA application and the APA application stage commences. After the parties have agreed to the APA, there is a further stage of monitoring compliance.

9C. Stages 1 and 2 consist of a number of steps (refer to Sections 10 and 11 of this Practice Statement for the steps in these stages) and it may be necessary to repeat certain steps where insufficient information is provided to support the APA request.

Flexibility of the advance pricing arrangement process

9D. The APA process does not have to be conducted in a linear manner. Steps may be combined or repeated where this is appropriate. However, whether a flexible approach is appropriate is to be determined by the APA team leader, in consultation with the APA Program Management Unit (APA PMU).

10. Stage 1 – early engagement stage

10A. Throughout the early engagement stage, staff are to build the cooperative relationship essential to the entire APA process in order to reach mutually agreed outcomes. In building this type of relationship, it is necessary to align taxpayer and our expectations as much as possible.

[3] Decisions in relation to the application of Part IVA of the ITAA 1936 need tobe made in consultation with the Tax Counsel Network (TCN). Refer to Law Administration Practice Statement PS LA 2012/1 *Engaging Tax Counsel Network on tax technical issues.*

[4] Refer to the process map at Appendix 1 of this Practice Statement.

10B. For us, this stage involves a robust and holistic strategic-level review of the APA request and supporting documentation, including an examination of the relevant global value chain. In later steps of this stage, we will discuss the proposed APA with the taxpayer in more detail.

10C. The early engagement stage is initiated by the taxpayer's submission of a completed early engagement form (containing the APA request). Prior to making the submission, taxpayers may request an initial meeting with us to discuss the possibility of an APA. While informal discussions are possible to address general questions, we will not engage in formal discussions unless the parties are identified.

10D. Once the early engagement form is received, the APA PMU will allocate it to an Engagement and Assurance team in Public Groups (APA team) and a CA.

10E. In the early engagement stage, the APA team will:

- explain the APA process to the taxpayer
- provide feedback on the APA request
- consider if collateral issues exist and appropriate pathways to address them
- evaluate whether the taxpayer should be invited to apply formally for an APA
- develop agreed plans with the taxpayer, one for the early engagement stage, and the other to conclude the APA itself.

10F. Stage 1 includes the following steps:

- preliminary discussions (refer to paragraphs 10G to 10J of this Practice Statement)
- APA Entry panel (refer to paragraphs 10K to 10S of this Practice Statement).

Preliminary discussions

10G. Preliminary discussions are held with the taxpayer to explore avenues for the appropriate treatment of the covered cross-border dealings and any collateral issues. Both parties will then know what to expect if and when the taxpayer lodges a formal APA application.

10H. Openly discussing the taxpayer's APA request should stimulate a free flow of information between all parties and lead to a more robust review of the request and any supporting documentation. Such discussions should better facilitate lodgment of a formal APA application and subsequent agreement to a workable and practical APA.

10I. During preliminary discussions, the APA team should:

- confirm the scope of the APA
- classify the APA (unilateral, bilateral or multilateral)
- ensure appropriate ATO stakeholders are involved in the APA process
- review and confirm the relevant worldwide structure of the taxpayer group and the role of the Australian entity or entities within the global value chain
- identify the preferred transfer pricing method, methods or combination thereof for each party
- identify and confirm any collateral issues and agree with the taxpayer on the approaches to resolve those issues – for example, roll-back of the APA result to income years prior to those covered by the proposed APA (refer to Section 15 of this Practice Statement)
- consider whether the taxpayer may need to address the exceptions to the basic rule in section 815-130. If the APA team considers that it is possible that one of the exceptions to the basic rule in section 815-130 might apply, the APA team needs to engage with the Senior Executive Service (SES) officer responsible for transfer pricing strategy within Public Groups
- agree with the taxpayer or their representatives on an early engagement case plan up to lodgment of the formal APA application
- agree with the taxpayer on a draft plan for completion of the APA after lodgment of the formal APA application
- in a bilateral or multilateral APA, keep the taxpayer informed, to the extent possible, of any discussions held with CAs of the other tax authorities.

10J. Once the scope of an APA is agreed, staff are not to change it other than in exceptional circumstances, which may include one or more of the following:

- changes to the taxpayer's cross-border dealings
- identification of a new issue with significant tax risk
- the need to interpret how the transfer pricing provisions apply to new cross-border dealings
- new issues raised by the CA of a tax treaty partner.

The APA team leader or CA, as appropriate, is to make any such change in consultation with the taxpayer.

Advance pricing arrangement Entry panel

10K. The main purpose of the APA Entry panel (Entry panel) is to make a decision on whether the taxpayer will be invited to lodge a formal APA application. It is an assurance process that facilitates consistency of approach across all APA requests. The SES officer responsible for the APA PMU holds the decision-making authority for APA entry, but as the Chair of the Entry panel, delegates that authority to the Entry panel members.

10L. In order to appropriately assess whether a taxpayer will be invited to lodge a formal APA application, the Entry panel identifies whether there are material impediments to the ATO entering into an APA with the taxpayer by examining the information supplied by the taxpayer and the APA team (refer to paragraph 10N of this Practice Statement). Where necessary, the APA team may request further information, for example, where the APA team needs further clarification in respect of the cross-border dealings or the global value chain.

10M. In preparation for the Entry panel, the APA team allocated to the APA request undertakes preliminary research. The APA team analyse and collate this research and the information supplied in the APA request and during preliminary discussions[5] for the purpose of making a presentation to the Entry panel.

10N. The preliminary research is a profiling exercise which may include the following:

- the tax and compliance history of the taxpayer
- current interactions between us and the taxpayer
- the taxpayer's performance under any prior APAs
- the taxpayer's transfer pricing documentation for the latest income year or years lodged, including, if applicable, transfer pricing method, comparable prices or margins, or the expected range of results
- the value of the taxpayer's total cross-border dealings
- the value of the cross-border dealings proposed to be covered by the APA
- other tax issues requiring consideration as part of the APA process.

10O. The Entry panel members will be appointed by the SES officer responsible for the APA PMU. The panel will consist of:

- an experienced officer from Economist Practice, International Support and Programs
- an officer with international tax expertise within Public Groups
- an officer with compliance expertise within Public Groups.

10P. Other participants may be invited to the Entry panel, however, these participants are not decision-makers on the APA entry. These participants include:

- a representative from the APA PMU
- APA team members
- the relevant CA assigned to the early engagement
- any relevant risk managers, technical experts, or SES officers if required.

10Q. As part of discussions with the APA team, the Entry panel members and participants may:

- provide high-level technical and risk advice
- examine preliminary technical analysis and review the related-party transactions, the collateral issues and any relevant existing precedential ATO view documents
- identify issues that may require referral to specialists, such as domestic and international tax risk experts
- identify other important considerations and provide intelligence to the APA team, including on any emerging risks or issues.

10R. The Entry panel will decide, by consensus, whether the taxpayer will be invited to make a formal APA application based upon the information provided and the position of the APA team. Where a consensus decision cannot be reached, the Chair will decide if the taxpayer will be invited into the APA program.

10S. Where the Entry panel decides that the request is not to proceed further, this decision is reviewed by the Chair and, if endorsed, the APA team leader will provide the taxpayer with written reasons for the decision, which may include steps for the taxpayer to reapply at a future point in time.

[5] For details of the information that should be included in an APA request, refer to the content on APA on www.ato.gov.au.

Considerations by the Entry panel

10T. In determining whether the ATO will invite the taxpayer to submit a formal APA application, the Entry panel should consider the taxpayer's relevant facts and circumstances in the context of the global value chain and other arrangements with which they might be linked.

10U. The Entry panel should not restrict their analysis to the cross-border conditions that are the subject of the proposed APA but should also consider any other relevant matters, including the matters listedin paragraph 10V of this Practice Statement.

10V. In addition to the indicators in Sections 6 and 7of this Practice Statement, the matters the Entry panel is to consider include whether:

- the information provided allows for a full and proper consideration of the APA request by us
- there is an explanation that demonstrates that the actual conditions are relevant and material to the taxpayer's business[6]
- the transfer pricing risks and issues arising from the actual conditions warrant the allocation of resources required for an APA
- an APA is a suitable product for the taxpayer, given their classification in the Action Differentiation Framework, the taxpayer's compliance history, and its performance under any previous APA
- the transfer pricing method proposed under the APA is unlikely to result in the taxpayer getting a transfer pricing benefit and whether the method best achieves consistency with the guidance material for the purposes of section 815-135
- in the absence of an APA, there is a likelihood that the actual conditions may result in double taxation or in a dispute
- we anticipate that the parties will agree on all aspects of the APA in a timely manner
- collateral issues are capable of being resolved prior to or in parallel with the APA (refer to Section 13 of this Practice Statement).

10W. This list is not exhaustive. No one matter is determinative and one matter does not have any greater weighting relative to another. The Entry panel's decision is to be made on balance after considering all relevant circumstances.

Entry panel decision

10X. If the decision by the Entry panel is to proceed to the next stage of the APA process, the APA team will extend a written invitation to the taxpayer to submit a formal APA application.

10Y. If it is decided by the Entry panel that the APA request should not proceed to submission of a formal application, the APA team will notify the taxpayer of that decision and provide written reasons for the decision.

10Z. The enhanced program governance removes the need for taxpayers to request a review of decisions on entry criteria and application requests.

11. Stage 2 – advance pricing arrangement application stage

11A. Once we invite the taxpayer to submit an APA application, the APA application stage commences. In this stage:

- The APA team critically analyses and evaluates the APA application, including any associated documentation and comparability analysis.
- The APA team develops an APA document containing the initial ATO position with which to enter negotiations.
- The initial ATO position is quality-assured and endorsed by the APA panel (refer to paragraphs 11I to 11M of this Practice Statement).
- The terms and conditions of the APA are negotiated with a view to reaching agreement (refer to paragraphs 11N to 11O of this Practice Statement).
- Where agreement is reached, the relevant parties enter into an APA (refer to paragraphs11AB to 11AH of this Practice Statement).

11B. Accordingly, the steps in Stage 2 are:

- analysis and evaluation (refer to paragraphs 11D to 11M of this Practice Statement)
- negotiation (refer to paragraphs 11N to 11AB of this Practice Statement)
- agreement (refer to paragraphs 11AC to 11AI of this Practice Statement).

11C. The first 2 steps in Stage 2 are iterative in that any initial ATO position may be developed further through the APA panel review and the negotiation

[6] Refer to paragraphs 41 and 47 of Taxation Ruling TR 2014/8 *Income tax: transfer pricing documentation and Subdivision 284-E* for the meaning of the terms 'relevant' and 'material'.

step. Also, multiple APA panels may need to take place.

ANALYSIS AND EVALUATION

Analysis and evaluation of the advance pricing arrangement application

11D. The APA team critically analyses and evaluates the APA application and the information in support[7] with the aim of verifying that:

- The proposed APA results in arm's length outcomes for the cross-border dealings to be covered, thereby mitigating any transfer pricing risk.
- There is sufficient information in support of the APA application to allow us to fully evaluate it.
- The proposal in the APA application is consistent with the taxpayer's request and preliminary discussions in the early engagement stage.

11E. To verify that the aims stated in paragraph 1D of this Practice Statement are satisfied, the APA team, in consultation with the Economist Practice, checks the APA application in respect of the following matters:

- transactions to be covered by the APA
- structures and the allocation of functions within different parts of the global group
- taxpayer's analysis of its functions, assets and risks
- resultant characterisation of the relevant cross-border dealings
- transfer pricing method proposed
- comparability analysis
- arm's length outcome proposed
- critical assumptions proposed.

11F. However, when verifying whether the proposed APA results in an arm's length outcome and having regard to the totality of the cross-border dealings between the entities, the APA team may need to make further enquiries of the taxpayer, such as:

- additional information requests to the Australian business, offshore business, or both
- interviews with key personnel of the taxpayer or the tested party.

11G. Where the proposal in the formal APA application is not consistent with details arising from preliminary discussions, the APA team may request from the taxpayer an explanation as to the differences. Where there is insufficient information for the APA team to conduct a full evaluation of the APA application, the APA team is to request the information it needs.

11H. The APA team reviews the taxpayer's functional analysis, comparability study and, where applicable, suggested arm's length range. In verifying that the outcomes arising from the APA application are consistent with the arm's length principle, the APA team may seek assistance from relevant specialists.

Advance pricing arrangement panel

11I. The APA team is to request an APA panel when they are ready to enter into negotiations. The APA team will present their draft position to the APA panel, along with any relevant information gathered during the early engagement and APA application stages. APA panels can be organised at an earlier stage, if necessary, to seek advice from the panel and enable resolution of specific issues.

11J. The purpose of the APA panel is to assist the APA team to progress the APA request and to recommend negotiation parameters to the APA team leader. The APA panel members will be appointed by the SES officer responsible for the APA PMU and the respective panels will be jointly organised by the APA PMU and the APA team. An APA panel will comprise of one representative from each of the following areas, each of whom are independent from the APA team:

- an experienced officer from one or both of the APA PMU and Transfer Pricing Strategy team within Public Groups
- an officer with compliance expertise within Public Groups
- an experienced officer from Economist Practice, International, Support and Programs.

11K. The SES officer responsible for the APA PMU, as chair of the APA panel, has the authority to decide on the panel recommendations but this authority is delegated to the APA panel members. The APA panel will make a decision by consensus, but where consensus is not reached, the chair will make the decision on the recommendations to be made to the APA team. The APA panel will consider input from the APA team, the Economist Practice, the CA, and, if appropriate, other technical specialists.

11L. The APA panel will:

- review the APA team's draft position and the information used by the team in the development of that position to verify that the

[7] For the list of information to be provided, refer to Advance pricing arrangements.

content of the APA request demonstrates an arm's length outcome

- accept the APA team's proposed negotiation parameters or recommend changes to the negotiation parameters
- review progress on the resolution of collateral issues to ascertain whether these issues provide any impediment to entering into the APA.

11M. If the APA team leader disagrees with the APA panel's recommendation, the APA team leader must escalate the matter to the APA team's SES officer for resolution. Where this SES officer endorses the APA team leader's decision to depart from the APA panel's recommendation, the APA team leader will provide written justification for this decision to the APA panel and proceed with negotiations on the basis of the endorsed position.

NEGOTIATION

Negotiation guidelines

11N. In negotiating the terms of the APA, the APA team or the CA are to apply the skills and attributes of an effective negotiator. These include:

- full, frank and open communication
- consideration in the sense of being able to appreciate the perspective of others
- problem solving, being the ability to creatively generate possible solutions and assess their appropriateness for the actual situation
- flexibility, in the sense of being open to adaptation or modification and having the willingness to yield at appropriate times, rather than having a fixed view or rigid attitude
- planning and organising by becoming familiar with the relevant information and determining the objectives
- acting professionally, including in particular exercising good judgment and appropriate discretion
- assertiveness, being the willingness to state our objectives and strive to reach agreement in a constructive and positive way.

11O. In negotiating an APA with each of the relevant parties, the APA team needs to have regard to the totality of the arrangements between the entities and the APA being:

- one method by which a perceived risk of a transfer pricing benefit can be managed and mitigated in the self-assessment regime
- an inherently commercial and practical outcome for the Australian entity to which we will commit.

Responsibility for negotiating an advance pricing arrangement

11P. In the case of a unilateral APA, the APA team leader will negotiate with the taxpayer, endeavouring to reach agreement on the terms of the APA. A CA will also be assigned to assist with negotiations and to support general consistency of views and approaches.

11Q. In the case of a bilateral or multilateral APA, the CA, in consultation with the APA team leader, will negotiate with the CA of the tax treaty partner or partners.

11R. Any exchange of information between CAs during the course of their negotiations is conducted in accordance with the Exchange of Information Article of the relevant taxation treaty and is confidential. Exchanges between CAs of position papers in the course of negotiations are considered to be part of government-to-government business. Although the APA team will explain our position to the taxpayer, the ATO position paper or papers of the CA of the tax treaty partner will not be supplied to taxpayers.

When agreement cannot be reached

11S. If agreement cannot be reached within the original negotiation parameters, the APA team leader or the CA, as appropriate, is to seek further guidance from the APA panel with a view to resetting the negotiation parameters (refer to paragraphs 11I to 11M of this Practice Statement). This includes where the APA team leader has proceeded on the basis of a position endorsed by their own SES officer.

11T. However, if the CAs cannot reach agreement on the terms of a bilateral or multilateral APA in a reasonable timeframe despite their best endeavours, the CAs may request review by a senior official of the respective tax authorities.

Withdrawing from the advance pricing arrangement

11U. If the ATO and the taxpayer or the treaty partner do not reach agreement on the terms of the APA, despite our best endeavours, we will withdraw from the APA.

11V. We may also decide to withdraw from the APA in the following instances:

- A viable resolution pathway cannot be agreed with the taxpayer or treaty partner that would result in the APA being finalised within a reasonable timeframe.

- The taxpayer is uncooperative and causes unreasonable delays in the APA process, does not respond, or does not provide complete and accurate information when responding to information requests. This extends to the resolution of collateral issues.
- Facts gathered through the early engagement or APA application stage significantly vary from the information provided in the taxpayer's submissions.
- Concerns exist that there is a tax avoidance scheme or similar schemes are proliferating such that a consistent ATO approach is required, and it is not appropriate for agreements to be reached with taxpayers individually.
- An agreement cannot be reached within 3 years of the APA commencement period. This is to ensure that APAs should be agreed having at least 2 prospective years out of the typical 5-year APA period.

11W. Withdrawing from an APA should only be contemplated after all avenues to reach agreement on the APA in a timely fashion are exhausted. Where an exit from the APA is being considered, the APA team leader should first communicate this with the taxpayer before requesting a special APA Exit panel (Exit panel) to seek endorsement for their recommendation to withdraw from the APA process. A consensus decision by the Exit panel is required and ultimately the decision on withdrawing the APA must be endorsed by the SES officer responsible for the APA PMU and that decision will be made in consultation with the APA team's SES officer.

11X. An Exit panel is specially appointed on a case-by-case basis by the SES officer responsible for the APA PMU and comprises of:

- an experienced officer from Economist Practice, International Support and Programs
- an officer with international tax expertise within Public Groups
- an officer with compliance expertise within Public Groups.

11Y. Other participants may be invited to attend the Exit panel, including the APA PMU, but they do not make a decision on the withdrawal from the APA process.

11Z. In instances where an APA agreement is not reached, we may subsequently use the factual information disclosed during the APA process. Staff are not to use non-factual information provided by the taxpayer in the course of the APA process in any subsequent risk or compliance activity. This non-factual information includes opinions, lines of argument, judgments or conclusions about the operation and effect of the APA.

If the taxpayer is dissatisfied with a decision made

11AA. Where a taxpayer is dissatisfied with a decision of the APA team leader or the APA panels and the issue cannot be resolved by the parties, the taxpayer may seek internal review.[8] For example, where the:

- ATO withdraws from the APA (refer to paragraph 11V of this Practice Statement), or
- ATO and the taxpayer reach a standstill in the APA process.

11AB. This review is undertaken by a senior officer with no prior involvement in that APA process.

AGREEMENT

Contents of the advance pricing arrangement

11AC. After negotiating the terms and conditions of a proposed APA, the parties will usually have reached agreement on the following matters:

- the names, addresses and countries of residence for taxation purposes of the parties to the APA
- terms of the APA
- the cross-border dealings covered by the APA
- the agreed transfer pricing method and how it is to be applied
- the arm's length amount, rate, range or other arm's length outcome
- critical assumptions, any breach of which need to be notified to us in writing
- a definition of each of the key terms in the APA
- a statement of the accounting standards on which the taxpayer's financial statements are based – for example, Australian International Financial Reporting Standards
- procedures for making a compensating adjustment, if necessary.

11AD. This agreement is recorded in the APA. The APA or other associated agreements will also state the taxpayer's documentation obligations for its ACR (refer to Section 12 of this Practice Statement).

[8] The decision by the Entry panel is not subject to the internal review, as noted in paragraph 10Z of this Practice Statement.

11AE. An APA will define in advance any factors or assumptions that are so significant that neither party to an arm's length situation would continue to be bound by the APA if any of them changed. A critical assumption can be a fact about the taxpayer, an affiliate, a third party, an industry, or general economic conditions that, if changed, would significantly affect the appropriateness of the substantive terms of the APA.

11AF. The APA team determines the suitability of a particular transfer pricing method and its application on the basis of the facts, including projected facts.

11AG. If the APA team considers that any changes in particular circumstances would materially affect the suitability of the transfer pricing method or its application under the APA, the APA team must include in the APA these circumstances as 'critical assumptions'. Critical assumptions should be included in the APA even where they are not within the taxpayer's or ATO's control. This may include the APA team using a range of 'profit level indicators' to test whether or not the level of profit implied by the application of the entity's transfer pricing method results in outcomes that are replicated by outcomes observed in the open market. In formulating or reviewing proposed critical assumptions, the APA team needs to have regard to the areas within the global group that contribute to its profit, including the profit forecasts over the APA term.

11AH. The APA needs to contain terms requiring a compensating adjustment where the tested party's actual results fall outside the agreed arm's length outcome, but otherwise there is no breach of any critical assumptions. These compensating adjustments are made to the tax position to achieve a price, point in the range or result that reflect the agreed arm's length outcomes.

11AI. Where necessary in the negotiation step, the APA team will have discussed with the taxpayer how a compensating adjustment is to be effected and the tax consequences of that adjustment.

12. Stage 3 – monitoring compliance stage

12A. Under the terms of the APA, the taxpayer prepares and lodges annually an ACR signed by the public officer for each income year covered by the APA. The ACR needs to contain only sufficient information to detail the actual results for the relevant year and to demonstrate compliance with the terms of the APA. This level of documentation should provide cost savings to taxpayers.

12B. The ACR is reviewed within a Public Groups Engagement and Assurance team (ACR reviewer). This review includes:

- checking whether any of the critical assumptions listed in the APA have been breached
- confirming that the terms of the APA have been met.

12C. Where we are of the opinion that one or more critical assumptions or terms of a bilateral or multilateral APA have been breached, the CA[9] will inform the tax treaty partner CA that the ATO is of that opinion. The CAs will discuss how to treat the breach under the mutual agreement procedure article of the relevant tax treaty.

12D. If a critical assumption or a term of a unilateral APA is breached, the ACR reviewer will inform the taxpayer and enter into discussions to obtain an explanation. The ACR reviewer determines how to treat the breach in consultation with the APA PMU. In appropriate instances, the APA may be modified, suspended or cancelled – for example, where the breach is a material one.

12E. The ACR reviewer should examine the ACR to determine:

- if the taxpayer is reporting results below or at the low end of any ranges specified in the terms of the APA without sufficient evidence demonstrating that external factors have caused this to occur
- whether the taxpayer has made compensating adjustments to effect a move to the agreed point, where their results are outside the agreed range.

12F. The ACR reviewer examines these compensating adjustments to verify they achieve a price, point in the range or result that is consistent with the agreed arm's length outcomes – for example, where profits fall outside the agreed arm's length range under the transactional net margin method.

12G. The ACR reviewer also needs to check whether the type of results specified in paragraph 12E of this Practice Statement are occurring consistently over the term of an APA. In such instances, the ACR reviewer is to note this for an APA team to take into account when dealing with any renewal request on similar terms.

12H. If the ACR reviewer believes that it is appropriate to modify, suspend or cancel the APA, the ACR reviewer is to request the APA PMU to organise an APA panel.

[9] The CA may consult the officer reviewing the ACR and, if necessary, the APA team, in coming to this opinion.

12I. The APA panel will provide a recommendation to the ACR reviewer on how to address the breach of the terms of the APA. If the ACR reviewer disagrees with this recommendation, they are to escalate the matter to their SES officer for a final decision.

13. Collateral issues

13A. A collateral issue is:

- an administrative or tax issue in relation to the taxpayer's affairs
- in addition to the cross-border dealings the subject of the APA.

13B. Collateral issues can include both transfer pricing and non-transfer pricing issues. Some examples of collateral issues include, but are not limited to, concerns regarding:

- the tax and transfer pricing-related structural arrangements – for example, business restructuring resulting in reduced profits in Australia, combined with interconnected tax structuring concerns
- the characterisation of tax and transfer pricing arrangements
- the substance of the arrangement relative to its form
- the application of the exceptions to the basic rule in section 815-130
- the application of general or specific anti-avoidance provisions.

13C. The existence of collateral issues may make it inappropriate for us to proceed with an APA. The approach will depend on the nature of the issue, the impact on the APA outcomes and the stage of the APA process in which the collateral issue is identified.

Collateral issue identified in Stage 1

13D. If a collateral issue is identified in the early engagement stage and the collateral issue:

- relates to the possible application of the anti-avoidance rules and directly impacts on the covered transaction, the taxpayer will not be invited to make a formal APA application and the APA process will cease
- may impact on the pricing of the dealings proposed to be covered, the pathway to resolution of the collateral issue must be agreed before the taxpayer is invited to make a formal APA application
- does not impact on the pricing of the dealings proposed to be covered, the taxpayer will be notified of the issue but may be invited to make a formal APA application.

Collateral issue identified in Stage 2

13E. If a collateral issue is identified during the APA application stage:

- unless the collateral issue relates to the application of the anti-avoidance rules and directly impacts on the covered transaction, the APA process may continue and where appropriate, a pathway for resolution of the collateral issue will be agreed with the taxpayer and the treaty partner
- if the collateral issue relates to the possible application of the anti-avoidance rules and directly impacts on the covered transaction, we will withdraw from the APA process.

Collateral issue identified in Stage 3

13F. If a collateral issue is identified during the monitoring compliance stage, we will consider if the collateral issue triggers a critical assumption. Where:

- a critical assumption is not triggered, the APA will continue to apply
- a critical assumption is triggered, we will seek to agree a resolution pathway with the taxpayer and treaty partner.

Resolving collateral issues

13G. Where a collateral issue is identified during Stage 1 or Stage 2 of the APA process, the general process for the APA team to follow is as follows:

- The taxpayer is informed about the collateral issue generally within 3 months of the risk being identified. The taxpayer must be given sufficient time to address questions before a decision is made by the APA panel.
- An agreement is to be reached with the taxpayer on how to deal with the collateral issue, including mutual obligations, expectations of timeframes and the type of information that is to be provided by the taxpayer.
- The appropriate information on the collateral issue is identified collaboratively with the taxpayer, so that the APA panel can come to a view if the APA application can be accepted or continue where it has already commenced. This decision is generally to be made by the APA panel within 6 months of the taxpayer agreeing on the resolution pathway for the collateral issue.

- We should withdraw from the APA, following the principles expressed in paragraphs 11W to 11Y of this Practice Statement, if the taxpayer is not adhering to the resolution pathway agreed.
- If the collateral issue is agreed to be dealt with outside of the APA, a separate review product on the collateral issue may be initiated. The timing of the separate review is subject to internal ATO considerations.
- If the collateral issue is dealt with in the APA process, the APA timeframes may be extended, which is agreed with the taxpayer and treaty partner.

13H. Where a collateral issue is identified during Stage 3 of the APA process, the APA team will:

- define the collateral issue
- articulate the risk hypothesis and tax mischief
- develop a resolution pathway in line with steps in paragraph 13G of this Practice Statement
- consider how to resolve the collateral issue in line with the existing critical assumptions.

13I. The taxpayer and ATO will need to discuss how collateral issues are to be addressed at the preliminary discussion step or as early as possible after the issue is identified. Options for the APA team in getting collateral issues addressed may include:

- recommending that a request for a private ruling or other advice and guidance product be lodged by the taxpayer
- referral to Tax Counsel Network (TCN)
- referral for risk assessment according to normal business line procedures.

13J. Where the taxpayer requests a private ruling in relation to a collateral issue, the APA team is to ensure they are aware of any implications the outcomes of the private ruling may have on the APA request. The APA team should consult with TCN on whether a private ruling is appropriate for issues relating to Part IVA of the ITAA 1936.

13K. Where there is no ATO view in respect of a collateral issue or that issue has implications beyond the APA under consideration, the APA team leader is to escalate the technical issues using normal business line procedures.

13L. Where possible, collateral issues should be addressed and resolved in parallel with, or as part of, the development of the APA. If the collateral issue impacts on the APA outcomes, they will need to be resolved before we enter into the APA. If this is not possible, the APA applicant will not be accepted into the program or we will withdraw from the process.

14. Roles of ATO officers involved in developing an advance pricing arrangement

14A. Many staff, who effectively form a multidisciplinary team, contribute to the development of APAs. In performing their role, each staff member needs to focus on using a pragmatic approach to develop an APA. Entering into an APA not only enables all parties to mitigate potential transfer pricing risks but also delivers mutual benefits such as cost savings and enhanced relationships over the term of the APA.

14B. In order to reach agreement, officers must build collaborative relationships with each of the relevant stakeholders based on mutual trust and transparency.

14C. A description of some of the roles of such officers is set out in paragraphs 14D to 14L of this Practice Statement.

Advance pricing arrangement team leader

14D. The APA team leader has overall responsibility for the APA request. Specific roles and responsibilities of the APA team leader include:

- analysing the APA proposal and seeking further information to support the APA request in the early engagement stage, if required
- communicating our position, reasoning and status of the APA application to the taxpayer
- determining if a flexible approach to the APA process is appropriate and developing a tailored APA case plan for the early engagement and APA application stages
- being accountable for the APA team actively managing the request and application, ensuring milestones, timeframes and assurance and reporting requirements are met
- involving and coordinating the input of technical specialists or other senior staff[10], as required
- undertaking analysis and evaluation of the taxpayer's APA request or application, including performing a functional analysis
- requesting APA panels, as required, to consider the progress of the APA request
- developing the negotiation parameters for consideration by the APA panel

[10] For example, the Economist Practice, special advisors or TCN.

- negotiating the terms and conditions of unilateral APAs with the taxpayer and assisting the CA in negotiations of bilateral APAs, within the set parameters
- providing written justification to the APA panel where the APA team leader has decided not to follow the APA panel's recommendation and this decision has been approved by the relevant SES
- coordinating the resolution of collateral issues with the APA process
- drafting the content of the APA for signing by the CA.

The advance pricing arrangement team

14E. The APA team performs the day-to-day activities of developing the APA. The members of the team assist the APA team leader in carrying out the tasks involved in developing an APA as listed in paragraphs 10E and 10G to 10I, 10M to 10N, and 14D of this Practice Statement. See also the tasks at paragraphs 10V to 10Y and 11D to 11I of this Practice Statement.

The economist

14F. An economist from Economist Practice assists the APA team leader, the APA team and, where applicable, the CA to critically analyse whether the taxpayer's proposed actual conditions are likely to be consistent with arm's length conditions.

14G. More specifically, an economist may assist by:

- evaluating the related-party transactions in the context of the taxpayer's business, industry and global value chain
- analysing the arrangement's important functions, assets and risks and other factors of comparability that may affect arm's length conditions
- advising on the transfer pricing method (and its application) that best achieves consistency with the OECD Guidelines
- where necessary, selecting and applying the most appropriate transfer pricing method and performing related benchmarking analyses
- identifying any other economic aspects that may affect the alignment of a taxpayer's Australian economic activity with its profit outcomes.

14H. The extent of involvement of an economist is determined on a case-by-case basis in accordance with Law Administration Practice Statement PS LA 2013/2 *Economic advice and the Economist Practice*.

The competent authority

14I. The CA is authorised to enter into a bilateral or multilateral APA. The CA negotiates the terms of the APA with the CA of the relevant tax treaty partner within the parameters set by the APA team leader.

14J. In a unilateral APA, a staff member, authorised as a CA, but acting in their capacity as an ATO employee, can endorse the decision of the APA team leader and sign the APA. The CA's role is to ensure the APA is consistent with the negotiation parameters and is otherwise an acceptable outcome.The CA will also support the APA team leader by providing analysis and advice on the resolution of the case, in particular the negotiation process.

14K. If there is disagreement between the APA team leader and the CA, rather than the endorsement referred to in paragraph 14J of this Practice Statement, the matter should be escalated to the APA team leader's SES officer for resolution.

The advance pricing arrangement Program Management Unit

14L. The APA PMU has overarching responsibility for the administration of APAs. This includes:

- allocating an APA request to an APA team and a CA
- convening and attending, as an observer, the Entry and Exit panels for each APA request
- convening and attending, as a panel member, the APA panel for each APA request
- assisting the APA team to decide whether a case is suitable for a flexible approach
- convening panels to monitor the progress of an APA request and to assist teams in resolving any issues or to make key decisions.

15. Applying the transfer pricing method used in an advance pricing arrangement to prior income years

15A. Transfer pricing issues that arise in income years prior to the commencement of the APA should be treated as collateral issues (refer to Section 13 of this Practice Statement).

15B. Where the principles developed in concluding an APA provide a reasonable basis, one approach to dealing with such issues may be to apply the principles or method used in the APA to the prior income years (roll-back). The APA team leader should consider

whether the principles developed in concluding an APA provide a reasonable basis for a roll-back. This would depend on the availability of all relevant information in respect of the prior years and whether there are any material changes in the taxpayer's circumstances in those years.

15C. Any decision on whether roll-back is available for years prior to an APA is made on a risk assessment basis. APA team leaders considering roll-back, subject to the facts and circumstances of the particular case, should:

- not seek roll-back where the transfer pricing issues for prior years are rated as low risk under ATO risk assessment procedures
- not seek roll-back for more than 3 years unless sufficient evidence has been obtained to verify that such years were not materially different to the 3 years of the APA. Where roll-back is greater than 3 years, the APA team leader should consult with the APA PMU
- be more likely to seek roll-back for issues rated as high risk.

15D. The APA team leader, the taxpayer and, where applicable, the audit team leader should agree how and when the prior years' issues should be resolved.

15E. Staff are to treat as a voluntary disclosure any amendment to prior years arising from roll-back where the following are satisfied:

- we have not initiated compliance or risk activity with respect to the prior-year returns, and
- there is a need to amend a prior-year return as a result of providing information for an APA.

15F. If there are unresolved non-transfer pricing related issues arising in prior years, these should be addressed through an active compliance product.

16. Interactions between advance pricing arrangements and ATO audits

16A. An APA does not preclude a taxpayer from a risk review or audit (active compliance product) of its business overall. Staff are to treat active compliance products and APA development separately, unless the taxpayer's facts and circumstances are sufficiently similar to enable the methodology used in the APA to be applied to the income years under active compliance review.

16B. However, leaving aside the annual compliance review process (refer to Section 12 of this Practice Statement), we will not undertake active compliance in relation to transfer pricing risk of the cross-border dealings which are the subject of an APA unless we have reason to believe that the taxpayer has omitted or provided incorrect information that is material and relevant. Furthermore, we will not duplicate in an active compliance product work already undertaken as part of the annual compliance review process.

16C. Where an APA does become part of the focus of an active compliance product, we may verify that the:

- taxpayer has complied with the terms of the APA
- agreed transfer pricing methodology has been correctly applied
- taxpayer's APA application and associated documentation reflect appropriately the material facts.

16D. Staff undertaking such active compliance products are not to consider the acceptability of the transfer pricing method agreed as part of an APA unless the omitted or incorrect information affects such matters.

16E. Staff are, generally, not to discontinue or postpone active compliance activity in respect of certain income years where the taxpayer applies for an APA in respect of subsequent income years.

16F. However, the active compliance product may be deferred or discontinued where all parties agree that the APA will assist in resolving these issues.

16G. The active compliance case manager, in consultation with the APA team leader, will make this decision after consideration of:

- the taxpayer's facts and circumstances
- any advice and recommendations from the APA team
- the cooperation and assistance provided by the taxpayer
- the stage of completion of the active compliance activity
- the issues in question
- the similarities between the facts and circumstances in respect of the income years under active compliance review and the APA request
- the relevance of information supplied as part of the APA request to the prior income years
- whether there is likely to be any significant differences between the outcomes under the active compliance activity and the APA and the reasons for any differences
- whether it is possible to finalise part of the active compliance activity and leave the issues related to the APA in abeyance

- whether entering into an APA will assist in resolving the issues in the active compliance activity.

17. Advance pricing arrangement renewal requests

17A. While an APA renewal request goes through the same stages and steps outlined in this Practice Statement for an initial request, the APA team is, where appropriate and as much as possible, to streamline the process so as to reduce the time involved and documentation provided in dealing with such requests.

17B. The circumstances where it may be appropriate for the APA team to streamline an APA renewal process include when:

- There have been no material changes to the covered cross-border dealings or the role of the Australian entity or entities within the global value chain.
- There are no proposed changes to the terms of the APA.
- It is unlikely there will be material changes to the dealings over the course of the period of the renewed APA.

17C. In a streamlined process, generally the APA team would only need to assure itself that:

- entering into an APA with the taxpayer is still appropriate, including the proposed APA producing arm's length outcomes
- the previous APA produced arm's length outcomes
- there have been no material changes to the covered dealings
- the updated benchmarks are appropriate
- the taxpayer has complied with the terms of the existing APA, as evidenced by our review of the ACRs lodged.

18. Use of independent experts

18A. Staff are to seek independent expert advice only in exceptional circumstances – for example, where all parties agree that a greater understanding of the relevant industry is needed. The APA team will discuss this aspect with the taxpayer in the early engagement or application stage.

18B. The APA team can share the expert's advice with the taxpayer. However, its release depends on finalisation of our position in respect of the expert's advice and any confidential third-party information in that advice.

19. Revision or cancellation of an advance pricing arrangement

19A. Despite the cooperative environment built on mutual trust being an essential part of the APA process, taxpayers may in rare instances omit or not provide correct information.

19B. Where we have reason to believe that the taxpayer has provided information or made statements in relation to material matters that are false or misleading or has omitted matters without which the information or statement is false or misleading, we are to review the APA with a view to determining whether it should be revised or cancelled.

20. Authority for entering into an advance pricing arrangement

20A. The Commissioner can enter into a unilateral APA by virtue of the general power of administration conferred on the Commissioner by section 1-7.

20B. An authorised CA signs and enters into a bilateral or multilateral APA under the MAP Article of the relevant tax treaty.

20C. The Commissioner has delegated his power to act as a CA to officers in specified positions under written instruments. Those delegated officers have also authorised nominated officers to exercise the power as CAs on their behalf. This power includes the ability of the CA to negotiate an APA directly with the CA of a tax treaty partner.

21. Process map

21A. An end-to-end map of the APA process is contained in Appendix 1 to this Practice Statement.

22. More information

22A. For further information, refer to Advance pricing arrangements.

Date issued: 23 July 2015

Date of effect: 23 July 2015

Amendment history

29 October 2025

Part	Comment
Throughout	Updated to reflect the recommendations resulting from the APA Program review.
Throughout	Updated in line with current ATO style and accessibility requirements.

30 September 2021

Part	Comment
Paragraph 8B	Updated second dot point to include a principal or main purposes test included in any of Australia's double-tax agreements.

3 December 2020

Part	Comment
Throughout	Updates made to improve clarity of the process, enhance governance at decision-making points, revise out-of-date references and make general improvements to readability.

16 March 2017

Part	Comment
Paragraph 7B	Updated reference to PCG 2017/2.

23 July 2015

Part	Comment
All	First published.

References

Legislative references	ITAA 1997 1-7 ITAA 1997 815-120(3) ITAA 1997 815-130 ITAA 1997 815-135 ITAA 1936 Pt IVA
Other references	Organisation for Economic Cooperation and Development (2017) *OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations 2017,* OECD Publishing, Paris. PCG 2019/1 PCG 2017/2
Related public rulings	TR 2014/8
Related Practice Statements	PS LA 2012/1 PS LA 2013/2

ATO references

ISSN	2651-9526
File no	1-6D9JZ2H
ATOlaw topic	International issues ~~ Cross-border financing ~~ Other

© AUSTRALIAN TAXATION OFFICE FOR THE COMMONWEALTH OF AUSTRALIA

You are free to copy, adapt, modify, transmit and distribute this material as you wish (but not in any way that suggests the ATO or the Commonwealth endorses you or any of your services or products).

Appendix 1

Diagram 1: APA process overview

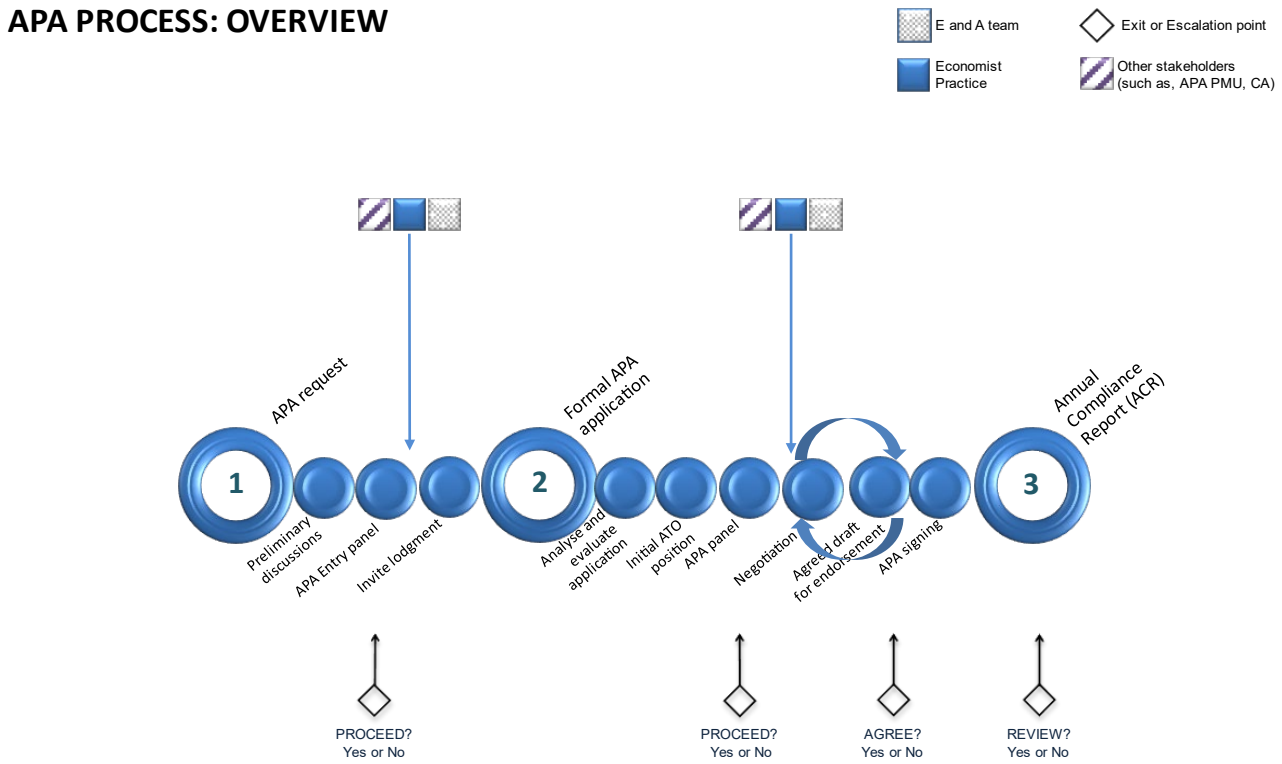


Diagram 2: APA process Stage 1

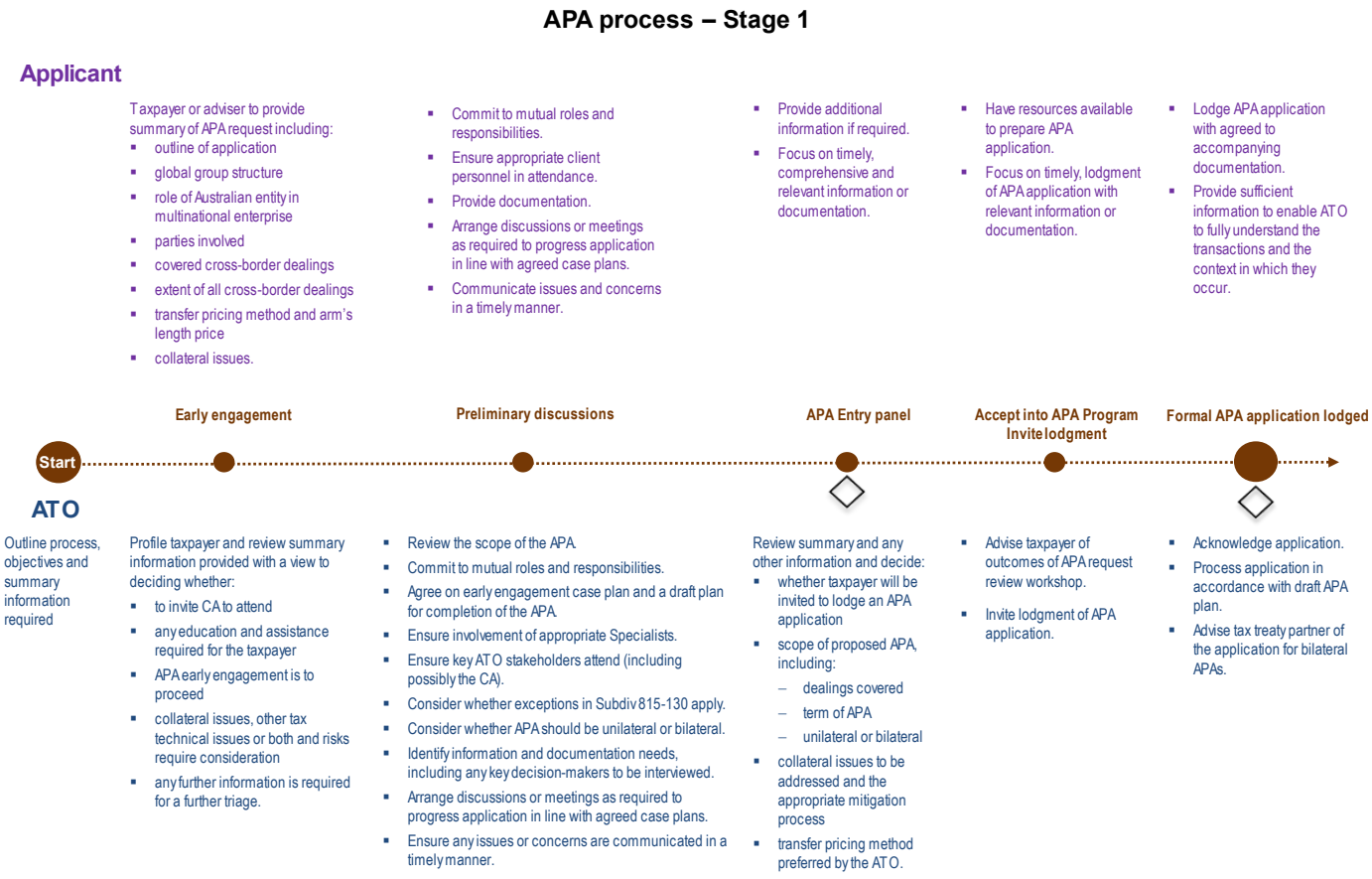


Diagram 3: APA process Stage 2

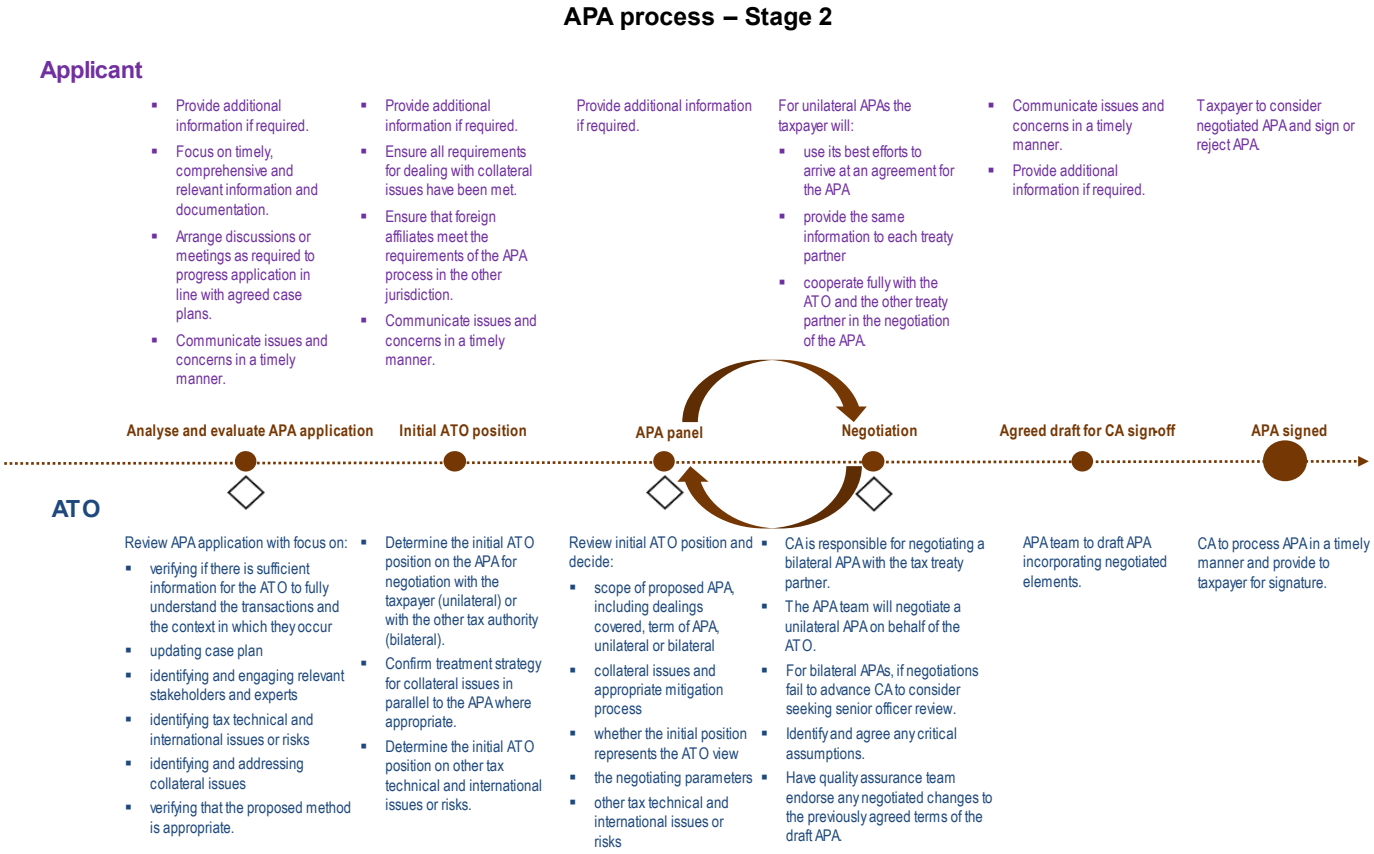
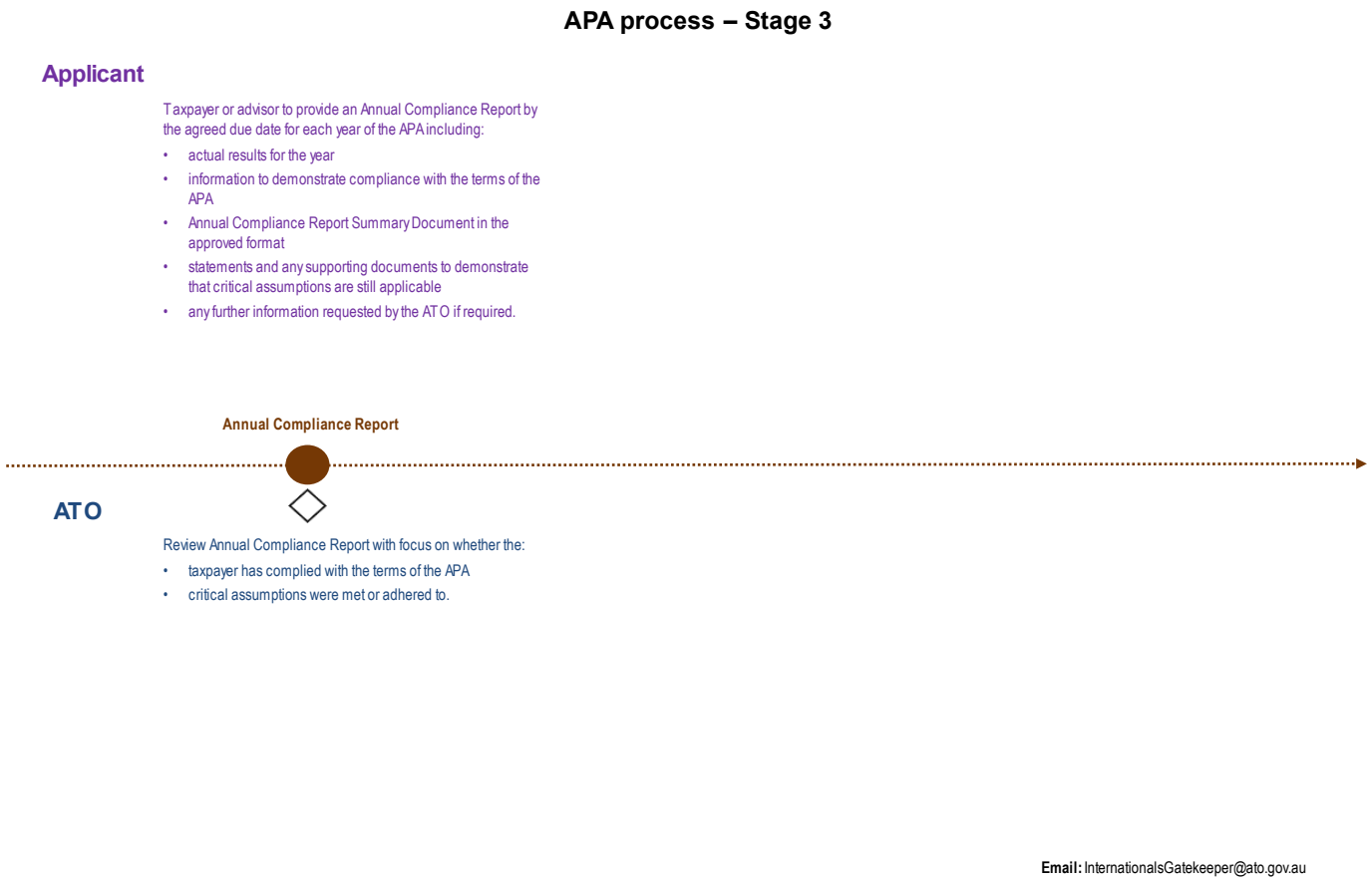


Diagram 4: APA process Stage 3



Email: InternationalsGatekeeper@ato.gov.au