

**MUTUAL AGREEMENT  
PROCEDURE &  
ADVANCE PRICING  
AGREEMENT**

**- Application & Implementation**

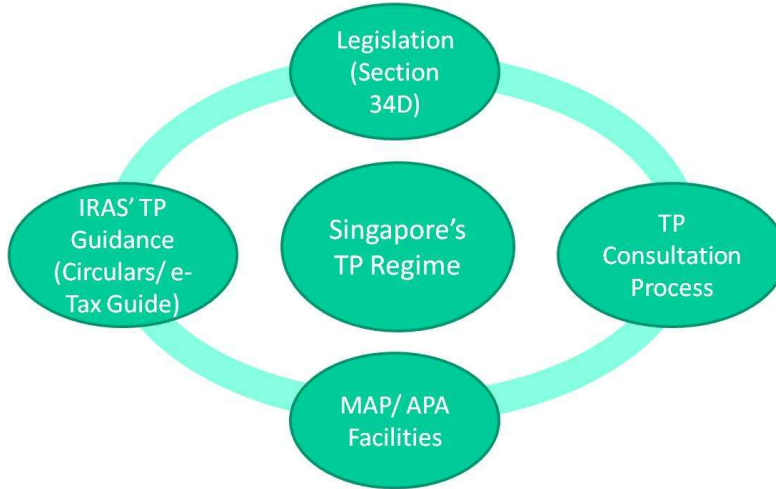
## **1. Objective**

- 1.1. The paper discusses the implementation and application of Mutual Agreement Procedure (“MAP”) and Advance Pricing Agreement (“APA”) in Singapore, and the recent developments concerning MAP/APA and our capacity building programme.

## **2. Background**

- 2.1. The Inland Revenue Authority of Singapore (“IRAS”) endorses and applies internationally accepted arm’s length principle (“ALP”) as standard to determine transfer prices of related parties. IRAS believes that the market force of supply and demand is the best way to allocate resources and reward effort. Given that the ALP is adopted by most tax authorities, this internationally accepted principle forms a common basis for both taxpayers and tax authorities in dealing with related party transactions. This should reduce the incidence of transfer pricing adjustments and improve the resolution of transfer pricing disputes. Thus, the potential for double taxation will be reduced.
- 2.2. There are 4 strategic thrusts in Singapore’s Transfer Pricing (“TP”) regime. They are legislation, published circulars, MAP/APA, and TP compliance.
- 2.3. A legal framework sets the TP regime in Singapore. Formal guidance in the form of circulars (or tax guides) is provided to taxpayers on the application of the ALP. They also set out procedures to guide taxpayers in requesting MAP and APA facilities to help taxpayers avoid or eliminate double taxation that may arise from TP adjustments and reiterate to the taxpayers the importance and commitment required from them for the APA process. To ensure taxpayers comply with the ALP and manage IRAS’ revenue risk, IRAS carries out TP consultations with companies.

2.4. Our TP regime is summarised in the diagram below:



2.5. There are several mechanisms for TP dispute prevention and resolution in Singapore under both domestic law and international convention. While unilateral APA can prevent TP disputes, the level of certainty for taxpayers is lower than bilateral or multilateral APA since the other tax authority may dispute the unilateral APA given that it is reached in the absence of their agreement. To resolve TP disputes, taxpayers may pursue TP litigation and appeal under domestic law but this is often viewed as an option of last resort given the cost of litigation. MAP has thus become the primary mechanism for resolving TP disputes. The mechanisms<sup>1</sup> in Singapore are summarised in the diagram below.

	Domestic	International
Prevention	Unilateral APA	Bilateral or Multilateral APA
Resolution	Litigation	MAP
	Appeal	Arbitration

<sup>1</sup> To-date, there has been no cases of domestic appeal for TP issues in Singapore. So far, the arbitration clause under Article 25 is available in our Comprehensive Avoidance of Double Taxation Agreement with Mexico.

### **3. MAP in Singapore**

- 3.1. Singapore currently has a network of 69 comprehensive Avoidance of Double Taxation Agreements (“DTA”) in force. All these DTAs provide for MAP to resolve instances of double taxation arising from transfer pricing adjustments suffered by taxpayers. Under the Articles on Associated Enterprises (“Article 9”) and MAP (“Article 25”) in the tax treaties, Singapore taxpayers can apply to IRAS to enter into discussions with Singapore’s tax treaty partners to eliminate any double taxation.
- 3.2. IRAS will generally accept a taxpayer’s request for MAP if:
- a) taxpayer is engaged in bona fide activities;
  - b) taxpayer has complied with the time limit specified in the MAP Article of the relevant DTA;
  - c) taxpayer is willing and able to render full cooperation throughout the process; and
  - d) double taxation is almost certain i.e. double taxation should not be just a possibility due to audits.

### **4. APA in Singapore**

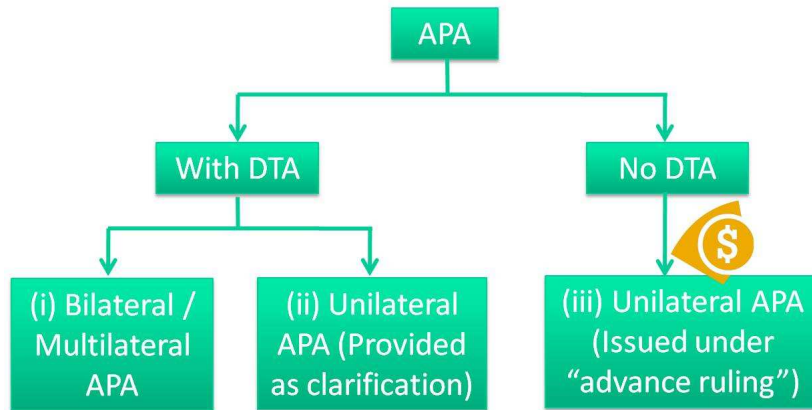
- 4.1. The introduction of APA where taxpayers and tax authorities could agree on the transfer prices prospectively has provided certainty to taxpayers, reduced audit time and slowed down the number of double taxation cases that tax authorities have to negotiate under the MAP.
- 4.2. The provisions under the MAP Article in Singapore’s tax treaties and the Singapore Income Tax Act enable IRAS to accede to requests from taxpayers for APAs and enter into such arrangements.
- 4.3. APAs can be agreements between:

- a) IRAS and the taxpayer (“unilateral APA”);
- b) Agreements between IRAS and a tax treaty partner on the transfer pricing between entities in their respective countries (“bilateral APA”);
- c) Agreements between IRAS and 2 or more tax treaty partners on the transfer pricing between entities in their respective countries (“multilateral APA”). This is effected by signing a series of bilateral APAs among all countries involved.

4.4. Where a DTA exists, a taxpayer can request to IRAS for a unilateral, bilateral or multilateral APA. A unilateral APA seeks clarification of the transfer pricing from IRAS for the taxpayer in Singapore. Accordingly, this does not allow the taxpayer to avoid the risk of double taxation by the other tax authority. Conversely, a bilateral or multilateral APA offers certainty and minimises such risk since it operates on the basis of cooperation between the taxpayer and the relevant tax authorities to reach agreement in advance. Although a bilateral APA is more common than a multilateral APA, the latter is useful where operations of multiple parties are closely integrated which result in complex transfer pricing issues.

4.5. If Singapore does not have a DTA with the other country, the unilateral APA comes under the framework of Singapore’s Advance Ruling System and the taxpayer will be charged a fee for the provision of an advance ruling based on cost recovery. A ruling issued under the Advance Ruling System will bind IRAS in the manner set out in the ruling. As the rulings are private and confidential, IRAS does not publish the rulings to the public. So far, there are very few unilateral APAs that come under the Advance Ruling System.

4.6. The types of APA in Singapore are summarised below.



## 5. APA Process in Singapore

5.1. APA is a voluntary process initiated by taxpayers. However it does not suspend any examination or enforcement process. Most APA requests cover 3 to 5 prospective years. IRAS will consider taxpayer's request to apply the APA to "roll-back" years only for bilateral and multilateral APAs<sup>2</sup> for 1 to 2 prior years based on the merits of the request, provided that there have been no significant changes to facts and circumstances during the "roll-back" period. The APA process with foreign tax authorities is similar to that under the MAP.

5.2. Should the taxpayer be subsequently subject to transfer pricing adjustments, the taxpayer has recourse to MAP (if DTA exists) or the other remedies that are available under domestic laws (e.g. court litigation) if

- a) APA request is rejected; or
- b) APA request is accepted but tax authorities could not reach agreement or the taxpayer could not accept the outcome.

5.3. A typical APA process has 4 main stages, Pre-filing, Formal Submission, Review/Negotiation and Implementation. Unilateral APAs generally follow

<sup>2</sup> IRAS will not consider requests for the APA to apply "roll-back" years in the case of unilateral APAs.

the same process except that the negotiation stage with the foreign tax authorities is not applicable. The following paragraphs elaborate on IRAS' positions on the APA process<sup>3</sup>.



- 5.4. Taxpayer wishing to file for APA will have to attend a pre-filing meeting at least 3 months before formal submission. Sufficient information has to be provided to IRAS to facilitate constructive discussion at least 1 month before the pre-filing meeting. This stage allows IRAS to assess the feasibility of the APA application and where feasible, to identify critical and relevant areas of focus, and set the deadline for the submission of APA application.
- 5.5. Formal submission should be made no later than 6 months before 1st day of proposed APA covered period. The formal submission should include general business information, functions, risks and assets employed, and a proper TP analysis with the proposed TP methodology, comparables and the arm's length results, and critical assumptions, etc. It is important that the information shared with all tax authorities involved in the APA request is equal (in terms of contents and timing) regardless of the number of parties involved.
- 5.6. IRAS will review the APA application and inform the taxpayer within 1 month if the application is accepted. In the case of bilateral and multilateral APAs, IRAS will proceed to contact the foreign tax authorities to initiate the APA review and negotiation process if IRAS has accepted the application. As part of the review stage, IRAS will develop a case plan containing a

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<sup>3</sup> References and procedures concerning foreign tax authorities would not be relevant for unilateral APAs.

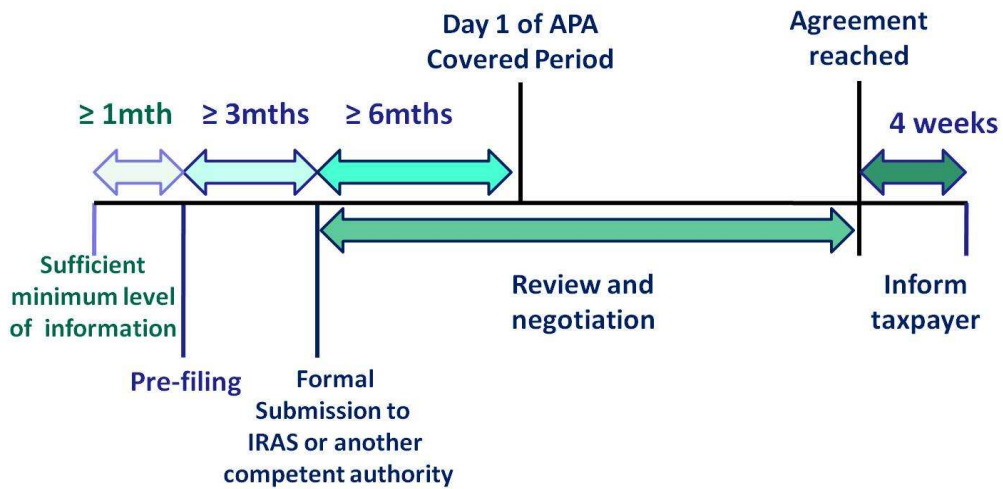
series of deadlines for milestones in the process together with the foreign tax authority (where possible). The case plan would be communicated to the taxpayer and this helps the monitoring of timeline for the APA and management of IRAS' resources. All parties involved will benefit from the common understanding and expected progress of the APA.

- 5.7. The negotiation of a bilateral or multilateral APA (as with the MAP) is a government-to-government process. Although taxpayers generally do not participate or attend as observers during the negotiations, IRAS would regularly update them on the outcome of the negotiations and expected time frame to complete their cases. Certain critical assumptions about the operational and economic conditions that will affect the transactions covered by an APA request would be negotiated and inserted into the APA. An example is a material change to the business activities or accounting methods of the covered entities for APA purposes.
- 5.8. IRAS believes that trust and pragmatism among tax authorities are important in the conclusion of a bilateral or multilateral APA. Tax authorities have to recognise that taxpayers need early tax certainty and thus should strive to resolve the case on a timely basis and be ready to compromise.
- 5.9. When an agreement is reached, IRAS will meet taxpayer within 4 weeks to discuss details and implementation of the agreement, compliance and monitoring requirements, etc. Taxpayer would have to submit APA compliance reports to IRAS annually. Unlike some countries, IRAS does not prescribe a fixed format for the compliance report. The report should include sufficient information showing how the taxpayer has complied with the APA e.g. the results fall within the agreed ranges, etc. Taxpayer should inform IRAS when there is a breach in the critical assumptions. When this happens, IRAS will initiate a discussion with the foreign tax authority to decide on whether to



- a) Continue with the bilateral APA based on existing terms;
- b) Change the terms of the bilateral APA to accommodate the change; or
- c) Discontinue with the bilateral APA.

5.10. The entire APA process till agreement would normally take about 2 years for bilateral APAs and 6 months for unilateral APAs and more time is required for complicated cases. The timeline of APA application process in paragraphs 5.4 to 5.9 is summarised in the diagram below.



## 6. Cases Concluded by IRAS

6.1. Singapore has concluded 14 unilateral APAs, 23 bilateral APAs (including 5 renewals), 1 multilateral APA and 11 MAPs, and all taxpayers have complied with the terms of APAs so far. There are a number of new APA requests and renewal requests which are work-in-progress.

6.2. IRAS generally do not reject MAP or APA requests as we aim to be business friendly and appreciate taxpayers' need for certainty in their businesses.

## **7. Regulations concerning MAP and APA**

7.1. TP legislation was formally enacted in Section 34D (“S34D”) of the Singapore Income Tax Act (“SITA”) on 29 December 2009. TP legislation was made “for the avoidance of doubt”. IRAS has always applied the ALP even before S34D was enacted, as evident in Article 9 of the numerous DTAs in place way before 2009. S34D of the SITA, which applies to related parties and related permanent establishments, is worded closely to the terms in Article 9 of the Model Tax Convention.

7.2. Three TP circulars (or tax guides) were issued so far and the guidance primarily follows what is cited in the OECD transfer pricing guidelines. The first TP guideline was published in February 2006. It gives guidance to Singapore taxpayers on applying the ALP, and discusses the authorised OECD TP methods, the recommended preparation and maintenance of documentation to demonstrate compliance with the ALP as well the APA and MAP process. IRAS does not have a specific preference for any one method as long as the method produces the most reliable results, taking into account the quality of available data and the degree of accuracy of adjustments. IRAS also does not prescribe the documentation that the taxpayer has to maintain to demonstrate that its transfer prices are established in accordance with the ALP. Instead, IRAS has listed, as a general guide, the types of information that may be helpful in substantiating that the taxpayer’s transfer pricing analyses are in accordance with the ALP and adopted the following principles with regard to documentation:

- a) Taxpayers are only required to prepare or obtain documents necessary to allow a reasonable assessment of whether they have complied with the arm’s length principle. Taxpayers are not expected to go to such lengths that the compliance costs arising from the preparation of documentation are disproportionate to the amount of tax revenue at risk, or to the complexity of the transactions.

- b) Singapore currently does not impose a penalty specifically for the lack or insufficiency of documentation. Taxpayers would not be penalised solely on the basis that the documentation is not sufficient or timely.
- c) In considering taxpayers' application for MAP, IRAS would assess the quality of taxpayers' documentation. Taxpayers who have not prepared adequate documentation may find their application for MAP rejected or that the transfer pricing issue would be much more difficult to resolve.
- d) IRAS does not require documentation to be submitted when the tax returns are filed. The documentation should be kept by the taxpayers and submitted to IRAS only when requested to do so.

A supplementary guide (clarifications on the APA process) was issued in October 2008.

7.3. The second TP-related guide was published in July 2008. This guide explains the process of the Transfer Pricing Consultation (TPC) conducted by the audit team in IRAS. The TPC serves to assess how well Singapore taxpayers have complied with the ALP. Selected taxpayers may be issued a TP questionnaire. Subject to further assessment on the taxpayer's TP risk, the taxpayer may be engaged further to ascertain whether its transactions are made at arm's length. TP adjustments may be made if profits recorded by the taxpayer is less than what it would have been, had all transactions been carried out at arm's length.

7.4. The third TP guide was issued in February 2009. It provides guidelines on the safe harbour rules for "routine" services (full cost-plus mark-up of 5%), details on pass-through costs and cost-pooling arrangements that would be acceptable to IRAS as well as charging of arm's length interest rates for related party loans.

7.5. It is hoped that by adhering to the principles and guidance in these circulars, Singapore taxpayers that transact with related parties would be able to reduce the risk of transfer pricing adjustments and double taxation.

- 7.6. IRAS has a less restrictive threshold for entering into MAPs or APAs as we believe that MAPs or APAs should be encouraged as long as there is a genuine motive to obtain certainty for the avoidance of double taxation and for APAs, the request relates to specific current or future transactions that are not hypothetical.
- 7.7. Paragraph 2 of Article 9 [“Article 9(2)”]<sup>4</sup> was inserted into the OECD Model Tax Convention only in 1977 and as a result, some of Singapore’s older treaties do not contain this provision. Despite this, Singapore will observe the spirit of the ALP and do the appropriate downward adjustment as long as Article 9 is present in the treaty. Accordingly, Singapore will enforce the ALP; tax only our fair share of profits; help our taxpayers who have suffered double taxation and provide maximum certainty for our taxpayers so that they may focus on and grow their businesses.

## **8. Developments Concerning MAP and APA**

- 8.1. The MAP in Singapore started in the 1990s and APA programme in 2001. Continuous improvements were made to the MAP and APA process since then with inputs from taxpayers and tax agents. The process has further evolved with the issuance of the supplementary administrative guidance on APAs in October 2008. This has significantly helped to speed up the process of our APA programme.
- 8.2. IRAS has spoken at public forums on our APA programme in Singapore such as TP forums organised by the Big 4 accounting firms, International Tax Forum by the Tax Academy of Singapore, etc and overseas in Japan and United Kingdom. This aims to promote the advantages of the programme and facilitates the understanding of the procedures.

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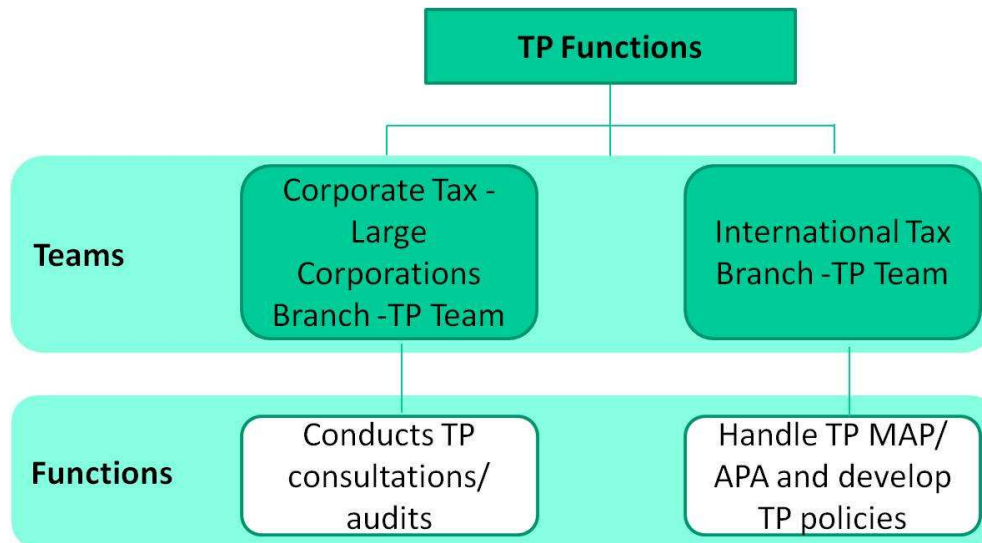
<sup>4</sup> Article 9(2) provides that tax authorities may consult each other to determine corresponding adjustments.

## 9. Capacity Building Programme on MAP and APA

9.1. Singapore capacity building programme on MAP and APA takes place on an organisational level and an international level.

### Organisational level

9.2. There are currently two specialised teams in IRAS looking at TP issues. There is a team in the International Tax Branch that focuses on APAs (unilateral/bilateral/multilateral) and MAPs, and develops TP policy matters. The other team, seated within the Corporate Tax Division, is responsible for conducting TP consultations or audits on companies and providing TP advice to the rest of the Corporate Tax Division. The teams and the functions performed are represented in the diagram below.



9.3. To build TP capability in APAs, the team in the International Tax Branch will work with the Corporate Tax Officer in charge of the taxpayer on the APA request. The taxpayer will have to interact with only one team. The involvement of the Corporate Tax Officer on the APA request is made known to taxpayers upfront. During APA meetings with the taxpayer and the foreign tax authority, an audit team member in the Corporate Tax

Division involved in TP consultations or audits and the Corporate Tax Officer may sit in as observers.

- 9.4. There are broad based trainings on TP related topics that take place at an organisation level such as in-house technical trainings, ad-hoc sharing sessions by colleagues and external experts, seminars and conferences. There are also in-depth training for selected officers such as joint IRAS-OECD training programmes, ad-hoc overseas OECD training programmes, Advanced Management Programme<sup>5</sup> in International Tax, and Transfer Pricing Programme organised by Australian School of Taxation and Business Law (The University of New South Wales) and the Tax Academy of Singapore.
- 9.5. IRAS is currently implementing on-the-job training on MAP and APA cases for all new officers in the International Tax Branch and selected audit team members in the Corporate Tax Division. This will allow audit team members who specialise in conducting TP consultations or audits to be trained and gain experience in handling MAP and APA requests. Officers in the International Tax Branch may be attached to the audit team for cross sharing of experiences and knowledge.

*International level*

- 9.6. IRAS has shared our knowledge and experience with MAPs and APAs with neighbouring tax authorities. Such sharing sessions are good opportunities for exchange of ideas.
- 9.7. Singapore has also participated at OECD WP6 and UN Tax Committee meetings where Singapore is currently an ad-hoc observer at WP6's Special Session on the TP Aspects of Intangibles.

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<sup>5</sup> The programme is a collaborative effort between Tax Academy of Singapore, Nanyang Business School (NBS) at Nanyang Technological University and International Tax Center of Leiden University. This executive tax programme comprises four one-week modules (one module on TP), all of which are conducted in Singapore over a period of eight months annually.

## **10. Conclusion**

10.1. Bilateral or multilateral APAs and MAPs are avenues for taxpayers and tax authorities to cooperate in finding a mutually acceptable solution. Taxpayers are increasingly interested in such avenues. It would be our key priorities as tax authorities to address the concerns of taxpayers which include length of time to resolve cases (which affect the cost involved) and the feeling of being left out during the process. Only by addressing these issues, will the taxpayers be encouraged to use APA or MAP as mechanisms to ensure more certainty for both tax authorities and taxpayers, which in turn, enhance and secure international economic relationships.