

**Australia Indonesia Partnership  
for Economic Governance**

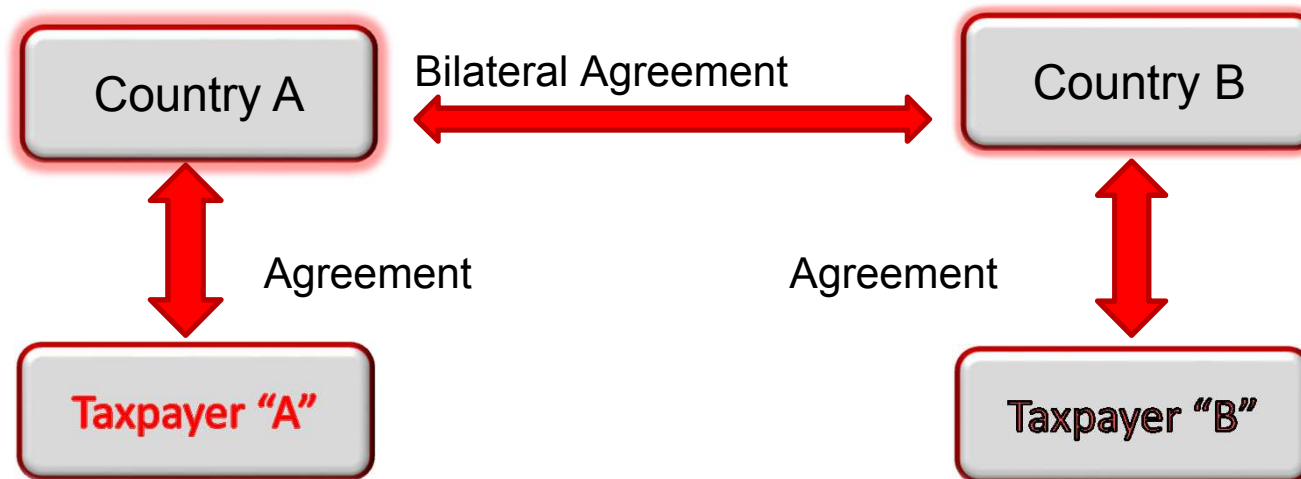


# **Experiences with Advanced Pricing Arrangements (APA) and Mutual Agreement Procedures (MAP)**

SGATAR Bali 2012

# What is an Advanced Pricing Arrangement (APA)?

- It is a voluntary **arrangement** for a period of 3-5 years;
- Taxpayer can withdraw from APA.
- Written & signed agreement between tax administration/s and an agreement with the respective taxpayer



# Where did APAs begin?

- Several countries had potential for APAs in the late 1980's;
- 1991 – USA & Australia agree on first worldwide Bilateral APA involving Apple Computers;
- Australia expected a number of taxpayers to apply but only a few applied;
- In 1995, the Australian Taxation Office (ATO) issued Tax Ruling TR 95/23 (June 1995);
- 1995 OECD Guidelines (July 1995). (Chapter 4);
- Public Relations tours to promote APAs;
- Up to 1999 – only 18 APAs finalised;
- TR 98/11 project – focus on high risk companies.

# APA Program

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YEAR	APAs COMPLETED
Pre 2000	18
2000	16
2001	20
2002	29
2003	25
2004	23
2005	38
2006	27
2007	31
2008	48
2009	29 (***)
2010	39
2011	53

## When is an APA most useful?

- PS LA 2011/1 (Practice Statement – Law Administration) – issued in March 2011)
- Difficult, complex and re-structuring cases;
- Covers all international related party dealings;
- Coverage of the industry (consistent approach); (e.g. aluminium industry)

- TP Network Forum was formed in 2008;
  - TP updates would be provided through newsletters, phone or video hook-ups;
- Membership was assigned at three levels:-
  - Senior or Specialist;
  - Intermediate;
  - Entry Level

- APA Case leader (Specialist TP Network Forum) (APA)
- Case Officer (APA);
- Economist (APA & MAP);
- APA Specialist/Competent Authority for Bilateral APAs; (APA & MAP)
  
- Transfer Pricing Review Panel (APA & MAP)

# MAP & APA (similar process)

- Inform Competent authority of other country as soon as possible;
- Resolution of potential double taxation should be open to both administrations;
- Exchange of information as soon as one taxpayer provides information – (no secrets)



## Phases of the APA Process (also MAP)

- (1) Initial discussions / Pre-lodgement meetings
- (2) Draft/Formal APA application (including TP documentation)
- (3) Analysis & evaluation
- (4) Transfer Pricing Review Panel
- (5) Negotiation
- (6) Formal agreement
- (7) Monitoring

- Important step - taxpayer and Tax office team meet & start to build a good relationship;
- Presentation by taxpayer;
- Opportunity for Tax Office to discuss and clarify issues, options and plans for APA.
- Draft APA could be analysed for feedback by Tax Office.
- Unilateral or Bilateral APA (BAPA)?
- Should involve the Transfer Pricing Specialist and Industry Specialist.

## (2) Draft/Formal APA application

- **Focus on taxpayer doing work but agreeing in principle (not final position) before formal lodgement;**
  - Years to be covered;
  - Identify IRPD (International Related Party Dealings);
  - **Proposed** Transfer Pricing Method;
  - Bilateral / Unilateral;
  - Scope of documentation to be provided;
  - Other compliance activities.

## **(3) Analysis & evaluation**

- The APA or MAP team and taxpayer work together;
  - Understand the business and industry;
  - Functional Analysis (testing);
  - Relevant interviews;
  - Documentation and Financial Statement analysis;
  - Communication with taxpayer and other country;
  - Aware that evidence for MAP will be more than an APA.

- Position paper – sufficient time to review
- Communication – all parties;
- TP Review Panel – Guidance;
- CA team – appropriate team;
- Homework – after CA meetings;
- Discussion and feedback with taxpayer;
- Hospitality – karaoke, dinner;
- Professional approach;
- Regular meetings.

## (4) Transfer Pricing Review Panel (TPRP)

- Sign-off for all international related party dealings subject to either audit or APA should be done at a TPRP
- Members of the ATO TPRP include:
- Bilateral APA / Audits/ MAP: - Chairperson (TP Specialist) , Audit/Industry specialist & economist.
- Unilateral APA's: Chairperson (Industry Specialist) & economist;

## (5) Negotiation

- The TP Review Panel will provide guidance;
- Competent Authority can exercise discretion to finalise issue based on principles;
- Cases are not black & white and there is usually scope to negotiate an outcome that approximates an arm's length outcome.

- Face to face meeting;
- Script – listen to what they are saying;
- “Open mind” – listen – take notes;
- Look for opportunities on agreement;
- Exchange documents, information (same time)
- Consider their numbers or proposals for viable options for opportunities to compromise.



## (6) Formal Agreement

- Discuss the potential agreement with the taxpayer to obtain their agreement;
- Carefully consider all terms and conditions to ensure no surprises and it is consistent with outcomes on similar cases.

## (7) Monitoring

- Documents retained (by APA team);
- Annual reports lodged each year to a central location;
- Economist usually involved;
- Review the Annual report (ACR) to ascertain whether the taxpayer has satisfied the terms and conditions of the APA for that year.

### MAP Article:

- Double Tax Agreements (DTAs) have a MAP Article (usually Article 25 - refer paragraphs 4.29-4.31 OECD Guidelines)
- Article 9(2) – does the Double Tax Agreement have this article?
- Does not compel agreement (endeavour to resolve);
- Taxpayer involvement – meeting?
- Only deals with tax
  - Not penalties or interest charged by Revenue Authority
  - These are not subject to relief

- Prove your case;
- Corresponding Adjustments
  - No relief;
  - Partial relief;
  - Full relief;
  - No case to answer.
- PATA Guidelines - MAP operational guidance for member countries of the Pacific Association of Tax Administrators (PATA – USA, Canada, Japan and Australia)

# Two (2) Stages of MAP

- Stage 1 – Involves the taxpayer and the Competent Authority (CA) of its country of residence;
  - Is there a case?
- Stage 2 – Involves the competent authority of both countries endeavoring to resolve the case



- PATA and OECD guidelines as to who should be part of Competent Authority team;
- Competent Authority team should be independent from the audit team;
- Most countries have independent teams;
- Auditors might be asked to participate but usually to explain issues.

# Objections

- When a tax assessment has issued, the company has a right to object. (Australia)
- If case goes to court and decision is made, the ATO is obliged to uphold decision and would not continue with MAP.
- ATO practice is that objections is held in abeyance while MAP meetings take place. (Is there a case?)
- If successful in MAP, the ATO would usually get the company to withdraw objection.
- 50% of tax is usually paid pending outcome of MAP;
- If no Double Tax Agreement in place, then taxpayer can proceed to objection and court.

# Typical Process

- Face to face meetings – timing, costs, who should be present;
- Exchange of papers – when?
- Interpreters – culture, language skills;
- Friction;
- Relationship;
- Consistency.
- Shoes.