

Proposed Revision of Procedures for Advance Pricing Agreements

Notice 2013-79

PURPOSE

This notice proposes a revenue procedure that would update and supersede Rev. Proc. 2006-9, 2006-1 C.B. 278, as modified by Rev. Proc. 2008-31, 2008-1 C.B. 1133, which is also superseded. The proposed revenue procedure would provide guidance and instructions on APAs and guidance and information on the IRS's administration of APAs.

The proposed revenue procedure would substantially restate Rev. Proc. 2006-9 to improve clarity, readability, and organization. The proposed revenue procedure also would reflect structural changes undertaken by the IRS since 2006, including the establishment of the Large Business & International Division, the realignment and consolidation of IRS transfer pricing resources under the Director, Transfer Pricing Operations, and the creation of the Advance Pricing and Mutual Agreement Program, the office responsible for evaluating, executing, and administering APAs on behalf of the IRS.

Additionally, the proposed revenue procedure would effect a limited number of

significant substantive changes. These changes may be summarized as follows:

Section of Proposed Update to Rev. Proc. 2006-9	Nature of Addition or Changes
2.02(3)	Explains potential interactions between requests for advance pricing agreements and requests for competent authority assistance. Recognizes that APMA may, in appropriate circumstances, condition its acceptance of an APA request upon taxpayer's agreeing to roll back the terms of the proposed APA. Further recognizes that APMA may, in appropriate circumstances, encourage a taxpayer that has sought APMA's assistance for a MAP case to extend the MAP resolution to APA years.
2.02(4)	Restates a preference for bilateral and multilateral APAs over unilateral APAs and makes clear that APMA may reject a unilateral APA request if its acceptance would be inconsistent with procedures and practices established with particular treaty partners.
2.03(3)	Requires that the taxpayer execute consent agreement(s) as necessary to extend the period of limitations for assessment of tax for each proposed APA year and each proposed APA rollback year.
3.02	Provides expanded pre-filing procedures, including mandatory submission of a pre-filing memorandum in cases raising certain issues.
3.02(2)	Provides that a taxpayer filing an APA request eligible for the small case APA user fee may seek permission to submit an abbreviated APA request.
3.03(3)-(5)	Provides for a new filing deadline for bilateral and multilateral APA requests.
3.04(1)	Establishes an appendix listing revised specifications for the content of APA requests.
3.06	Provides for e-mail communications between APMA and a taxpayer's representative pursuant to a memorandum of understanding executed by the taxpayer.
3.07	Provides that a protective claim for credit or refund may be made by including the claim in a bilateral or multilateral APA request.
3.08	Clarifies that a complete APA request (updated and supplemented as required) will be a factor in determining

	whether the taxpayer has met the documentation requirements of Treas. Reg. §1.6662-6(d)(2)(iii) for the proposed APA years.
4.01	Describes procedures for notification of receipt of an APA request.
4.02	States circumstances in which APMA may deny assistance with respect to an APA request or during the APA process.
4.02(3)	Clarifies that APMA's decision as to whether an APA request is complete or to deny, suspend or terminate assistance is not subject to administrative review.
4.03	Describes general practices that APMA will follow after an APA request has been filed with respect to, among other things, issuing case plans, conducting due diligence, and conveying its views on APA requests to the taxpayer.
4.05	Clarifies that mandatory arbitration may apply to certain bilateral or multilateral APA requests.
5.01	Elaborates on potential coordination between requests for advance pricing agreements and requests for competent authority assistance. Provides that a taxpayer may seek permission to submit an abbreviated APA request if the relevant factors surrounding its proposed APA years and any proposed APA rollback years are substantially the same as those in its MAP years or its MAP and ACAP years covered by a MAP resolution. Presents protocols for seeking permission to file an abbreviated APA request in these circumstances.
5.02(4)	States that APMA reserves the right to coordinate with applicable IRS offices to pursue an APA rollback to any or all of the taxpayer's open pre-APA years, regardless of whether the taxpayer requests an APA rollback.
5.02(5)	Clarifies that an APA rollback request submitted in connection with a bilateral or multilateral APA request and involving a taxable year under the jurisdiction of IRS Appeals will constitute a request for the Simultaneous Appeals Procedure, provided that the taxpayer provides an affirmative statement requesting SAP review.
5.02(6)	Clarifies that, except in unusual circumstances, an APA rollback will not be made to a taxable year whose period of limitations for assessment of tax has expired in the United States.
7.02	Restates and revises the treatment of and procedures regarding repatriation payments for bilateral or multilateral

	APAs and unilateral APAs.
8.01	Provides that a taxpayer may seek permission to submit an abbreviated APA request in cases involving renewals of current APAs if the relevant factors of the current APA are substantially the same as those in the proposed renewal APA years. Presents protocols for seeking permission to file an abbreviated APA request in these circumstances.
Appendix – 3.04	Revises qualifications for small case APA user fee eligibility.

The IRS and the Treasury Department request comments on this proposed revenue procedure. Comments may be submitted in writing on or before March 10, 2014. Comments should be submitted to Internal Revenue Service, CC:PA:LPD:PR (Notice 2013-79), Room 5203, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044, or electronically to Notice.Comments@irs.counsel.treas.gov. Please include "Notice 2013-79" in the subject line of any electronic communications. Alternatively, comments may be hand delivered between the hours of 8:00 a.m. and 4:00 p.m. Monday to Friday to CC:PA:LPD:PR (Notice 2013-79), Courier's Desk, Internal Revenue Service, 1111 Constitution Ave., NW, Washington, DC. All comments will be available for public inspection and copying.

The procedures for APAs are proposed to be revised as follows:

PROPOSED REVENUE PROCEDURE

Procedures for Advance Pricing Agreements

Internal Revenue Code § 482: Allocation of income and deductions among taxpayers

Rev. Proc. [2014-YY]

Section 1: DEFINITIONS AND RULES OF CONSTRUCTION

Section 2: PURPOSE, BACKGROUND, SCOPE, AND GENERAL CONDITIONS UNDER WHICH THIS PROCEDURE APPLIES

Section 3: PROCEDURES FOR FILING APA REQUESTS

Section 4: ACTIONS ON APA REQUESTS

Section 5: APA ROLLBACKS AND COORDINATION WITH REV. PROC. 2014-XX

Section 6: LEGAL EFFECT OF AN APA.....

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Section 8: RENEWING AN APA

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Section 13: DRAFTING INFORMATION.....

APPENDIX.....

SECTION 1. DEFINITIONS AND RULES OF CONSTRUCTION

.01 *Definitions.* For purposes of this revenue procedure, the following terms have the meanings set forth in this section.

Abbreviated APA request	An APA request from which APMA has explicitly authorized the taxpayer to omit otherwise required information, documents, or content, in contrast to a complete APA request, which must meet all of the requirements discussed in section 3.04 and as set forth in the appendix
ACAP	Accelerated competent authority procedure (<u>see</u> section 4 of Rev. Proc. 2014-XX)
ACAP request	A request filed under section 4 of Rev. Proc. 2014-XX to include ACAP years in a MAP case
ACAP years	Taxable years covered by an ACAP request or eligible for ACAP
Ancillary issues	Subsidiary issues eligible for coverage by an APA, including APA repatriation (<u>see</u> section 7), interest on refunds and deficiencies, penalties with respect to U.S.-initiated adjustments, and the determination of whether a payment is compulsory for foreign tax credit purposes as provided in Treas. Reg. §1.901-2(e)(5)
APA	An advance pricing agreement
APA annual report	The report prepared for each APA year demonstrating the taxpayer's compliance with the covered method(s) and APA terms and conditions
APA primary adjustment	An adjustment made to a taxpayer's actual results such that its reported taxable income is consistent with the application of the covered method(s)
APA process	The series of formal or informal steps described in this revenue procedure or established by the APA team during the

	course of its evaluation of an APA request that are involved in reaching an APA, including steps involved in meeting pre-filing requirements
APA repatriation	The treatment of repatriation payments under an APA
APA request	A request for a unilateral, bilateral, or multilateral APA submitted under this revenue procedure
APA rollback	The application (with appropriate modifications, if necessary) of the covered method(s) of an APA to specific pre-APA years
APA rollback request	A request for an APA rollback submitted under this revenue procedure
APA team	The IRS team assembled to process an APA request
APA team leader	The designated APMA team leader who serves as the taxpayer's point of contact during the APA process
APA term	All of the APA years covered by an APA
APA terms and conditions	The terms and conditions of the APA, including the APA years, operational and compliance provisions, critical assumptions, and record-keeping and annual reporting responsibilities
APA year	A taxable year covered by an APA
APMA	The Advance Pricing and Mutual Agreement Program, a representative office of the U.S. competent authority and one of the divisions of TPO
Arbitration treaty	A U.S. tax treaty in which the mutual agreement procedure article includes a provision for mandatory arbitration of certain cases, as described in section 12 of Rev. Proc. 2014-XX
Bilateral APA	An APA in which the covered issue(s), covered method(s), and APA terms and conditions are premised on an underlying MAP resolution reached between the U.S. competent authority and a foreign competent authority

Bilateral APA request	A request for a bilateral APA submitted under this revenue procedure
Code	The Internal Revenue Code of 1986 (26 U.S.C.), as amended
Controlled group	The group of controlled taxpayers, within the meaning of the term set forth in Treas. Reg. §1.482-1(i), of which the taxpayer filing the APA request is a member
Coverable issues	The issues eligible to be covered by an APA, including issues arising under section 482 of the Code; certain MAP issues, notably those arising under the business profits and associated enterprises articles of U.S. income tax treaties; determinations of the income effectively connected with the conduct of a trade or business within the United States; determinations of the respective amounts of income sourced from within and without the United States in the case of income derived from both such sources; ancillary issues; and any other issues for which transfer pricing principles may be relevant to their resolution by APMA
Covered group	The group of U.S.- and non-U.S. taxpayers within a controlled group, including the taxpayer filing the APA request, whose intercompany transactions or other business activities are within the scope of the covered issue(s)
Covered issue diagrams	Diagrams, charts, or similar representations described in the appendix that depict, among other items, the legal structure, tax structure, business unit structure, intercompany flows, and value chain of the controlled group and proposed covered group
Covered issue(s)	The coverable issue(s) that is (are) covered by the APA
Covered method(s)	The transfer pricing method(s) or other method(s) set forth in the APA for determining the taxable income of each member of the covered group in relation to

	the covered issue(s)
Critical assumption	Any fact the continued existence of which is material to the issue(s) and method(s) covered by an APA, whether related to the taxpayer, a third party, an industry, or business and economic conditions
Dollar file request	An APA request for which the required user fee is paid before, and which is then submitted by, the deadline set forth in section 3.03(4)
Filed year	A taxable year for which a U.S. federal income tax return has been filed, determined by reference to the stage in the APA process at which the characterization as filed or not filed is relevant
Foreign competent authority	The competent authority of a treaty country
Global trading arrangement	Global trading arrangement: Any arrangement involving multiple associated enterprises or the business unit(s) of an enterprise that operate in more than one country and that trade or deal in securities and/or other financial products, either on their own behalf or on behalf of clients. Global trading arrangements may encompass functions ancillary to the foregoing activities.
Intangible development arrangement	Any arrangement for sharing the costs and risks of developing intangibles, including a cost sharing arrangement as defined in Treas. Reg. §1.482-7 or a qualified cost sharing arrangement as defined in Treas. Reg. §1.482-7A (collectively, a “CSA”), or an arrangement (other than a CSA) for sharing the costs and risks of developing intangibles to which the consideration of the principles, methods, comparability, and reliability considerations set forth in Treas. Reg. §1.482-7 is relevant in determining the best method, under Treas. Reg. §1.482-4(g) or Treas. Reg. §1.482-9(m)(3), as appropriately adjusted in light

	of the differences in the facts and circumstances between such arrangement and a CSA. <u>See also</u> Treas. Reg. §1.482-1(b)(2)(iii)
IRS	Internal Revenue Service
IRS Examination	The function(s) within the IRS responsible for examining federal tax and information returns and ascertaining the correctness of any return for purposes of determining the tax liability of taxpayers
LB&I	Large Business & International Division of the IRS
MAP	Actions taken by the U.S. competent authority and consultations between the U.S. and foreign competent authorities under U.S. tax treaties, principally the mutual agreement procedure article
MAP case	A case initiated by a MAP request or by the U.S. competent authority under Rev. Proc. 2014-XX involving one or more MAP issues in a given MAP year or set of years
MAP issue	An issue that can be resolved by the U.S. competent authority, principally under the mutual agreement procedure article of a U.S. tax treaty
MAP process	All steps in the process of reaching a MAP resolution of a MAP case under Rev. Proc. 2014-XX
MAP repatriation	The treatment of repatriation payments pursuant to a MAP resolution, as defined in Rev. Proc. 2014-XX
MAP request	A request for assistance of the U.S. competent authority filed under Rev. Proc. 2014-XX
MAP resolution	A resolution of (i) MAP issues constituting a MAP case under Rev. Proc. 2014-XX or (ii) MAP issues constituting a case initiated by a bilateral or multilateral APA request under this revenue procedure
MAP year	A MAP year, as defined in Rev. Proc. 2014-XX
Multilateral APA	An APA in which the covered issue(s),

	covered method(s), and APA terms and conditions are premised on one or more underlying MAP resolutions reached between the U.S. competent authority and more than one foreign competent authority
Multilateral APA request	A request for a multilateral APA submitted under this revenue procedure
OECD Guidelines	The transfer pricing guidelines promulgated by the Organisation for Economic Cooperation and Development
Opening conference	The first meeting between the taxpayer and an APA team after an APA request has been submitted
Pre-APA year	Any taxable year ending before the first APA year
Pre-filing conference	A conference held with APMA before an APA request is filed
Pre-filing memorandum	A memorandum or similar paper submitted to APMA before an APA request is filed
Pre-filing requirements	The requirements regarding pre-filing memoranda and pre-filing conferences as described in section 3
Protective claim	A notification to the U.S. competent authority described in section 13 of Rev. Proc. 2014-XX and section 3.07
Regulations	U.S. Treasury regulations promulgated under the Code
Repatriation payment	A payment (within the meaning of section 4.01 of Rev. Proc. 99-32) or prepayment offset (within the meaning of section 4.02 of Rev. Proc. 99-32) made with respect to and not exceeding the amount of an APA primary adjustment
Rev. Proc. 2014-XX	Rev. Proc. 2014-XX, 2014-Y C.B. ZZ
Rev. Proc. 99-32	Rev. Proc. 99-32, 1999-2 C.B. 296
SAP review	The review of a MAP issue undertaken by IRS Appeals for the purpose of making a recommendation to the U.S. competent authority under the Simultaneous Appeals Procedure of Rev. Proc. 2014-XX
Small case APA user fee	The user fee required for APA requests that meet the criteria set forth in the

	appendix
Taxpayer	Unless indicated otherwise by context, the member of the covered group that (i) submits the APA request, (ii) executes the APA with the IRS, and (iii) is either a U.S. person, as defined in section 7701(a)(30) of the Code, or a non-U.S. person that is expected to file U.S. federal income tax returns during the proposed APA years
TPO	Transfer Pricing Operations, the director of which reports to the Deputy Commissioner (International), LB&I
Treas. Reg.	U.S. Treasury regulations promulgated under the Code
Treaty country	A country other than the United States that has a U.S. income tax treaty in force
U.S. competent authority	The Deputy Commissioner (International), LB&I, the Assistant Deputy Commissioner (International), and each other IRS official performing competent authority functions pursuant to applicable delegation orders (<u>see</u> section 2.03 of Rev. Proc. 2014-XX)
U.S. tax treaty	A convention governing income, estate, or gift taxes to which the United States is a party and that has entered into force, together with its implementing protocols, exchanges of diplomatic notes, memoranda of understanding, and competent authority arrangements
U.S.-initiated adjustment	A proposed or final adjustment made by the IRS to the taxable income reported by a taxpayer on its U.S. federal income tax return
Unilateral APA	An APA in which the covered issue(s), covered method(s), and APA terms and conditions are not premised upon an underlying MAP resolution
Unilateral APA request	A request to enter into a unilateral APA under this revenue procedure

.02 *Section References.* Unless indicated by context or otherwise, section

references are to the sections of this revenue procedure (including the appendix).

.03 Deadline References. If a deadline under this revenue procedure falls on a Saturday, Sunday, or a legal holiday in the District of Columbia, the deadline is extended to the next succeeding day that is not a Saturday, Sunday, or a legal holiday in the District of Columbia.

SECTION 2: PURPOSE, BACKGROUND, SCOPE, AND GENERAL CONDITIONS UNDER WHICH THIS PROCEDURE APPLIES

.01 Purpose. This revenue procedure provides taxpayers with guidance and instructions on filing APA requests and guidance and information on the administration of APAs. This revenue procedure updates and supersedes Rev. Proc. 2006-9, 2006-1 C.B. 278, as modified by Rev. Proc. 2008-31, 2008-1 C.B. 1133, which is also superseded.

.02 Background and Principles.

(1) In February 2012, the IRS established APMA to oversee its APA program and to act as the representative office of the U.S. competent authority responsible for handling MAP cases arising under the business profits and associated enterprises articles of U.S. tax treaties. APMA also has shared responsibility for cases arising under the permanent establishment articles of U.S. income tax treaties. (See section 2.04 of Rev. Proc. 2014-XX.) In accordance with its mission, APMA endeavors to administer the programs within its jurisdiction in a manner that secures the appropriate tax bases of the United States and its treaty partners, prevents fiscal evasion, and is otherwise consistent with sound tax administration.

(2) APMA's APA program provides a voluntary process whereby the IRS and taxpayers may resolve transfer pricing issues and issues for which transfer pricing principles may be relevant in a principled and cooperative manner on a prospective basis. APMA is committed to conducting the APA process in a manner that is fair, timely, and consistent with principles of sound tax administration. The APA process increases the efficiency of tax administration by encouraging taxpayers to come forward and present all the facts necessary for a proper evaluation of their coverable issues and to work towards a resolution of such issues in a spirit of openness and cooperation. The voluntary and prospective nature of the APA process lessens the burden of compliance by giving taxpayers greater certainty regarding their covered issues and promotes the principled resolution of these issues by allowing for their discussion and resolution in advance before the consequences of such resolution are fully known to either taxpayers or the IRS.

(3) APAs and MAP resolutions of MAP cases are two interconnected means by which taxpayers can manage and address transfer pricing and other cross-border tax issues. In recognition of these connections, APMA seeks to resolve APA and MAP requests to achieve substantive and procedural consistency and coordination in their coverage and application. For example, when warranted by similarity of facts and circumstances across taxable years, APMA will encourage a taxpayer to expand the scope of its APA request to include an APA rollback (with appropriate modifications, if necessary) when a comprehensive resolution of coverable issues would further the interests of sound tax administration. APMA may also condition its acceptance of an

APA request upon the taxpayer's agreement to roll back the terms of its proposed APA (with appropriate modifications, if necessary) where APMA has clear interests in doing so and the taxpayer does not offer clear reasons against doing so. Conversely, APMA may require a taxpayer that has sought APMA's assistance for a MAP case to pursue ACAP to extend the MAP resolution of the MAP case to one or more of its ACAP years. APMA may also encourage the taxpayer to extend the MAP resolution even further into APA years. The relationship between APAs, MAP cases, and ACAP is addressed in more detail in section 5 and in Rev. Proc. 2014-XX.

(4) APMA's interest in coordinating APAs and MAP cases is also reflected in its preference for bilateral and multilateral APAs over unilateral APAs. To minimize taxpayer and governmental uncertainty and administrative cost, bilateral and multilateral APAs are generally preferable to unilateral APAs, particularly when a contemporaneous bilateral or multilateral APA request would have been effective and practical (within the meaning of Treas. Reg. §1.901-2(e)(5)(i)) to obtain consistent treatment of the covered issue(s) with a treaty country or treaty countries. Furthermore, in some circumstances, APMA may reject a unilateral APA request if accepting it would be inconsistent with procedures and practices established with particular treaty partners. For these reasons, the taxpayer must explain in a pre-filing memorandum why a unilateral APA is appropriate to cover an issue that could be covered by a bilateral or multilateral APA (see section 3.02(4)).

(5) Additionally, because APMA has a strong interest in resolving transfer pricing and other coverable issues in a timely manner, APMA may encourage the taxpayer to

expand the scope of the proposed APA to include coverable issues relevant to the proposed covered issues when a comprehensive resolution of coverable issues would further the interests of sound tax administration. APMA may also condition its acceptance of an APA request upon the taxpayer's agreement to include such other issues among the covered issues, when APMA has clear interests in doing so and the taxpayer does not offer clear reasons against doing so.

(6) As appropriate, APMA will provide oral, informal advice to taxpayers, whether or not in the course of the APA process, on general and specific matters concerning APAs, including whether an issue may be covered by an APA. Any such informal advice is advisory and is not binding on the IRS.

.03 General Requirements for Initiating and Continuing the APA Process.

(1) To initiate the APA process, the taxpayer must (i) meet the pre-filing requirements set forth in section 3.02, as applicable; (ii) submit a complete APA request, as described in section 3.04; and (iii) pay the correct user fee, as described in section 3.05 and as instructed in the appendix to this revenue procedure (generally referred to as the "appendix").

(2) Throughout the APA process, the taxpayer must supplement its APA request and provide updated information in accordance with sections 3.10 and 3.11.

(3) Throughout the APA process, the taxpayer and the IRS will execute consent agreement(s) as necessary to extend the period of limitations for assessment of tax for each proposed APA year and for each proposed APA rollback year. The taxpayer will be instructed as to the type of consent to execute, viz., general or restricted, and the

duration of the extension for each proposed APA year and each proposed APA rollback year. Any general questions regarding the execution of consents required by this section may be directed to APMA by one of the means identified in the appendix.

SECTION 3: PROCEDURES FOR FILING APA REQUESTS

.01 *General.* This section sets forth procedures, rules, and guidelines relevant to filing an APA request. This section also addresses the taxpayer's obligations before and after filing the request. Instructions on preparing and filing an APA request are also set forth in the appendix.

.02 *Pre-filing Requirements and Requests for Pre-filing Guidance.*

(1) *General.* In the interest of making the APA process effective and efficient, APMA invites, and in some cases requires, the taxpayer to meet with APMA in a pre-filing conference prior to filing the APA request. For the same reason, APMA invites, and in some cases requires, the taxpayer to submit a pre-filing memorandum prior to filing the APA request. Pre-filing requirements are set forth in sections 3.02(3) through 3.02(7). Questions about pre-filing requirements may be directed to APMA by one of the means identified in the appendix.

(2) *APA Requests Eligible for Small Case APA User Fee.* The pre-filing requirements set forth in sections 3.02(3) through 3.02(7) do not apply to APA requests that are eligible for the small case APA user fee. A taxpayer that seeks to file such an APA request may submit the small case APA user fee together with a complete APA request or may contact APMA by one of the means identified in the appendix to discuss filing an abbreviated APA request.

(3) *Requesting Pre-filing Conferences.* A taxpayer that wishes to hold a pre-filing conference with APMA must submit its request as part of a pre-filing memorandum filed pursuant to section 3.02(4) or 3.02(5).

(4) *Mandatory Pre-filing Memoranda.* A pre-filing memorandum must be filed if (a) the taxpayer wishes to file a unilateral APA request to cover an issue that is eligible for coverage by a bilateral or multilateral APA (see section 2.02(4)); (b) the taxpayer seeks permission to file an abbreviated APA request (see section 5.01 or 8); or (c) the covered issue(s) proposed by the taxpayer will, or could reasonably be expected to, involve any of the following: (i) the license or other transfer of intangibles in connection with, or the development of intangibles under, an intangible development arrangement; (ii) any arrangement that qualifies as a global trading arrangement; or (iii) unincorporated branches, pass-through entities, hybrid entities, or entities disregarded for U.S. tax purposes. If a pre-filing memorandum is not filed in the cases described in this section, APMA may, among other possible actions, require that a pre-filing memorandum be submitted before it will take action on the APA request from the taxpayer. APMA will not accept anonymous pre-filing memoranda in the cases described in this section.

(5) *Optional Pre-filing Memoranda.* A taxpayer may voluntarily submit a pre-filing memorandum in cases other than those set forth in section 3.02(4). Although not required, APMA recommends that a pre-filing memorandum be submitted for APA requests that may present novel or complex substantive or procedural issues. Optional pre-filing memoranda may be submitted on an anonymous basis. APMA generally

recommends, however, that optional pre-filing memoranda be provided on a named basis so as to facilitate a more informed understanding of the procedural and substantive issues that may arise during the APA process.

(6) *Contents of Pre-filing Memorandum.* If submitted pursuant to section 3.02(4), a pre-filing memorandum must have a length and content appropriate to the size and complexity of the covered issue(s) proposed by the taxpayer. If submitted pursuant to section 3.02(5), the pre-filing memorandum must have a length and content appropriate to the substantive or procedural issues the taxpayer wishes to raise with APMA. The memorandum must also do the following:

(a) Include a “penalties of perjury” statement modeled on the statement set forth in the appendix (unless the memorandum is submitted on an anonymous basis);

(b) State whether the taxpayer seeks a pre-filing conference and, if so, the issues the taxpayer wishes to discuss;

(c) Propose at least three possible dates for a pre-filing conference, whether or not the taxpayer seeks a pre-filing conference, in case APMA requires a pre-filing conference;

(d) Include covered issue diagrams if the pre-filing memorandum is required under section 3.02(4);

(e) If the pre-filing memorandum is submitted pursuant to section 3.02(4)(b), it must (i) present the taxpayer’s arguments that the applicable law, facts and circumstances, economic conditions, and other factors surrounding its proposed covered issue(s) and method(s) for the proposed APA years are substantially the same

as those surrounding the current APA or surrounding the MAP resolution in the MAP case, (ii) specify any information, documents, or other materials the taxpayer proposes to omit from its APA request, and (iii) discuss the taxpayer's arguments that the information, documents, or other materials the taxpayer proposes to omit from its APA request are not necessary for APMA's evaluation of the APA request (see sections 5.01 and 8);

(f) List the name and contact information for the taxpayer's point of contact and, unless the pre-filing memorandum is submitted on an anonymous basis, provide a Form 2848 authorizing the point of contact to represent the taxpayer in connection with the APA request or a Form 8821 authorizing the point of contact to inspect or receive confidential tax information about the taxpayer in connection with the APA request; and

(g) Identify all open pre-APA years of the taxpayer and which of such years, if any, are under examination by the IRS.

(7) *Place for Submission of Pre-filing Memorandum.* Two printed copies and one electronic copy of the pre-filing memorandum must be submitted to APMA at the address provided in section 4 of the appendix.

(8) *Actions Taken with Respect to Pre-filing Conferences and Memoranda.*

(a) APMA will notify the taxpayer whether it will accept or decline the taxpayer's request to hold a pre-filing conference. The taxpayer will also be notified if a pre-filing conference is required, even if the taxpayer did not request a conference. If a pre-filing conference is held, it will address procedural and substantive issues pertinent to the APA request. During the conference, the taxpayer should be prepared to discuss the

relevant facts and circumstances surrounding the issue(s), method(s), and terms and conditions it proposes to cover in the APA. If APMA declines the taxpayer's request for a pre-filing conference or decides that no pre-filing conference is required, APMA will direct the taxpayer as to how to proceed with its APA request.

(b) Unless the taxpayer is required to submit a pre-filing memorandum pursuant to section 3.02(4), a pre-filing conference may be held on an anonymous basis. APMA generally recommends, however, that pre-filing conferences be held on a named basis so as to facilitate a more informed discussion of procedural and substantive issues that may arise during the APA process.

(9) *Informal Advice in Pre-filing Conference.* Statements or representations made by APMA in a pre-filing conference constitute informal advice and are, therefore, advisory only (see section 2.02(6)).

.03 Time for filing.

(1) *In General.* An APA request must be filed by the applicable deadline set forth in this section.

(2) *Unilateral APA Requests.* Except as provided in section 3.03(4), the taxpayer must file a complete unilateral APA request no later than the due date prescribed by statute (including extensions) for filing its Federal income tax return (or, if the taxpayer receives an extension to file its Federal income tax return, a date no later than the actual filing date of the return) ("return due date") for the first proposed APA year.

(3) *Bilateral and Multilateral APA Requests.* A complete bilateral or multilateral APA request must be filed no later than the earlier of (i) the return due date for the first

proposed APA year, except as provided in section 3.03(4), and (ii) within 60 days after the bilateral or multilateral APA request regarding the same proposed covered issue(s) and APA years has been filed with a foreign competent authority, except as provided in section 3.03(5).

(4) *“Dollar File” Requests.* APMA will consider an APA request as having been filed on the return due date for the first proposed APA year if (i) the correct user fee is paid (within the meaning of section 7502(a) of the Code) by the return due date for the first proposed APA year, and (ii) a complete APA request is filed within 120 days of the return due date for the first proposed APA year. APMA may agree to extend the 120-day filing deadline by 30 days if the taxpayer requests such an extension before the 120-day filing deadline expires. This paragraph does not apply to APA requests that must meet the filing deadline set forth in section 3.03(3)(ii) or 3.03(5).

(5) *Transition Rule for Bilateral and Multilateral APA Requests.* For some taxpayers, the filing deadline set forth in section 3.03(3)(ii) will be on a date before the effective date of this revenue procedure (see section 11). This paragraph presents a transition rule that provides such taxpayers with a grace period by which to submit the correct user fee and complete APA request, as follows. If (a) the taxpayer intends to file a bilateral or multilateral APA request that must meet the filing deadline set forth in section 3.03(3)(ii), and (b) the filing deadline set forth in section 3.03(3)(ii) is before the effective date of this revenue procedure, then APMA will consider the APA request as having been filed by the deadline set forth in section 3.03(3)(ii) so long as all of the following conditions are met: (i) the taxpayer pays the correct user fee no later than the

earlier of (A) 30 days from the effective date of this revenue procedure, and (B) the return due date for the first proposed APA year; and (ii) the taxpayer submits a complete bilateral or multilateral APA request no later than the earlier of (A) 120 days from the effective date of this revenue procedure, and (B) 120 days from the return due date for the first proposed APA year.

.04 Content and Form of Complete APA Requests.

(1) *In General.* The appendix sets forth the required contents of a complete APA request, identifies the order in which such contents should be presented, and provides information and instructions on other administrative matters relevant to filing a request. An APA request must comply with the requirements set forth in the appendix before it will be considered complete. Any questions about filing an APA request not addressed in this section or in the appendix should be directed to APMA by one of the means identified in the appendix.

(2) Any information submitted by a taxpayer in connection with its APA request must be true, correct, and complete (see the appendix). All documents in or described in the APA request must be explained in sufficient detail to make their contents readily understandable. Such an explanation might include, for example, definitions of terms used, explanations of the goal and flow of calculations, the sources of data, and the identity of a document's creator and the purpose for which it was created.

.05 User Fees.

(1) The user fee requirements and rules of application are set forth in the appendix.

A taxpayer that seeks a decision on the user fee applicable to its APA request must contact APMA or submit a pre-filing memorandum.

(2) The taxpayer must pay the applicable user fee no later than the date it files the APA request. User fees must be paid through the Pay.gov website. APMA will consider an APA request to be complete only when the correct user fee has been paid through the Pay.gov website.

(3) APMA will notify the taxpayer if it has paid less than the correct user fee. In such a case, the taxpayer has the option of making up the difference or withdrawing its APA request and receiving a refund of the amount it has paid.

.06 E-mail Communications. A complete APA request must include either an executed memorandum of understanding permitting APMA to communicate with the taxpayer's authorized representatives through encrypted e-mail or a statement that the taxpayer does not permit such e-mail communications and an explanation for its declining to do so. See the appendix. An electronic copy of the standard form memorandum of understanding is available on the APMA website [link to be included when available].

.07 APA Request as Protective Claim. For purposes of this revenue procedure only, a protective claim for credit or refund may be made by including the claim in a bilateral or multilateral APA request. To be a valid protective claim for credit or refund, the protective claim must fulfill the requirements of section 13.02(3) of Rev. Proc. 2014-XX. See section 13 of Rev. Proc. 2014-XX and the appendix.

.08 Effect of Filing. The submission of a complete APA request, updated and supplemented in accordance with the requirements of this section 3, will be a factor taken into account in determining whether the taxpayer has met the documentation requirements of Treas. Reg. §1.6662-6(d)(2)(iii) for the proposed APA years. Submission of a complete APA request does not, in itself, suspend examination or enforcement proceedings. Although APMA will coordinate within the IRS to minimize duplicative requests in conducting its due diligence, the taxpayer remains obligated to respond to information document requests issued, and according to deadlines set, by other IRS offices in any examination or enforcement proceedings.

.09 APA Term. In its APA request, the taxpayer must propose a term for the APA that is appropriate to the proposed covered issue(s) and to the commercial factors surrounding the taxpayer's industry and line(s) of business. Although the appropriate APA term will be determined on a case-by-case basis, a request for an APA should propose an APA term of at least five years, unless the taxpayer states a compelling reason for a shorter term. Additionally, it is in the interest of sound tax administration for APMA to seek to have at least three prospective taxable years remaining in the APA term upon the execution of an APA (in the case of a unilateral APA) or upon the execution of a MAP resolution (in the case of a bilateral or multilateral APA). Accordingly, APMA may require that the taxpayer agree to extend the APA term in order to ensure such prospectivity. In the case of a bilateral or multilateral APA, any proposed term extension will be coordinated with the relevant foreign competent authority(ies).

.10 Requested and Supplemental Items.

(1) The information, documents, and materials required of APA requests that are identified in the appendix may not exhaust items relevant to an APA team's evaluation of a given APA request. If the APA team determines that it needs additional information to analyze the APA request, the taxpayer will be asked, and thereby required, to provide such information. The taxpayer must respond similarly to requests made by a foreign competent authority, as applicable.

(2) In general, the taxpayer must provide to all relevant competent authorities any responses, information, documents, or analyses that it provides to one competent authority, whether such responses, information, documents, or analyses are provided in response to a request from a competent authority or are submitted voluntarily by the taxpayer in support of its APA request. In the interest of minimizing administrative burdens, the APA team will work with the taxpayer during the APA process to find efficient procedures for disseminating responses, information, documents, or analyses to the competent authorities, such as using indexes to catalogue information, documents, or analyses the taxpayer will make available to the competent authorities upon request.

.11 Corrected and Updated Information.

(1) After the APA request is filed, any material errors or any material omissions in the APA request or in supplemental submissions must be promptly corrected or remedied. The taxpayer must also submit any information or documents discovered or created during the APA process that are, or reasonably may be, relevant to the APA request.

(2) The taxpayer must notify APMA of all material changes and updates to information previously submitted in connection with the APA request.

(3) Any financial data produced in connection with the APA request during the APA process must be updated annually or on a schedule that is mutually acceptable to the taxpayer and to APMA. In addition, the APA request must be supplemented with a demonstration of the application of the proposed covered method(s) to the actual financial results of the applicable members of the proposed covered group for each taxable year completed while the APA request is pending. Such a supplemental submission must be provided within 180 days of the close of the taxable year. APMA may, at its discretion, grant an extension or modify these requirements if the taxpayer provides written notification before the date the supplemental submission would otherwise be due.

.12 *Withdrawing the Request.* The taxpayer may withdraw its APA request at any time before it executes the APA. APMA generally will not refund user fees if the taxpayer withdraws its APA request after APMA has begun its due diligence.

SECTION 4: ACTIONS ON APA REQUESTS

.01 *Decision Letter and Contact Information.* APMA will notify the taxpayer in writing

that it has received the APA request. The letter will also provide the name and contact information of the assigned APA team leader to which the request has been assigned. In addition, the letter will state either: (1) that the request is complete and that the APA process will proceed, together with any administrative or procedural steps the taxpayer must take pertaining to the APA request; (2) that the request is provisionally accepted but that the APA process will not proceed until specified deficiencies in the request have been addressed; or (3) that the request is rejected and the circumstances, if any, under which the request might be accepted. APMA will also instruct the taxpayer as to other offices within the IRS to which full or partial copies of the APA request must be provided.

.02 Denial of Assistance.

(1) APMA may deny assistance, in whole or in part, at any point in the APA process, either at the outset by rejecting the APA request or by terminating or suspending the APA process after it has accepted an APA request. APMA will generally take such actions if any of the circumstances described in, or similar to those described in, section 6.02 of Rev. Proc. 2014-XX are present, including failure to include the materials required by this revenue procedure in the APA request (see section 3) or the materials requested by the APA team during the APA process.

(2) If APMA denies assistance, it will determine whether to refund the taxpayer's user fee. APMA will base its decision on various considerations, including the extent of the due diligence and analysis the APA team had undertaken before further assistance is denied.

(3) APMA's decision as to whether an APA request is complete or to deny, suspend, or terminate assistance is not subject to administrative review.

.03 Formation of APA Team, Opening Conference, Case Plan, and Taxpayer Review

(1) Once APMA has determined that the APA request is complete and that it will continue with the APA process, the APA team leader will contact the taxpayer to set a date for an opening conference or, depending on the nature of the proposed covered issue(s) and method(s) and other aspects of the APA request, to inform the taxpayer that an opening conference may be unnecessary before the APA team moves forward with its analysis. If the opening conference is held, the taxpayer may be asked to respond to questions from the APA team about the APA request by a given date before the opening conference or at the opening conference itself. The APA team leader may postpone the opening conference if the responses are not provided by the date set or agreed to by the APA team leader.

(2) The primary purpose of an opening conference is to give the taxpayer an opportunity to acquaint the APA team with the APA request and the issue(s), method(s), and terms and conditions the taxpayer is proposing to be covered by the APA. The meeting may also include a more detailed discussion of particular aspects of the taxpayer's proposals. Accordingly, the taxpayer should be prepared to discuss the APA request in detail and respond as fully as possible to questions about its proposals.

(3) The opening conference will also cover general procedural issues, including whether a case plan is appropriate and, if so, when it may be useful in the APA process

for a case plan to be implemented, in light of the due diligence and analysis the APA team expects to undertake in the APA process. If feasible in light of the scope and complexity of the proposed APA, the APA team may also provide an estimate of the time it will take to complete its evaluation of the APA request. Whether this estimate holds true in any given case will primarily depend upon a variety of factors: the quality of the APA request; the extent of the taxpayer's cooperation with the APA team, including the completeness and timeliness of its responses to information requests and other due diligence inquiries during the APA process; and, in the case of bilateral or multilateral APAs, the speed with which the foreign competent authority is able to be prepared to discuss the case with the APA team. Accordingly, any timetable discussed or set forth in a case plan is only an estimate and is subject to revision and extension.

(4) For a bilateral or multilateral APA request, APMA will consider requests from, and may invite or require, the taxpayer to make presentations jointly to the U.S. and foreign competent authorities during the APA process. APMA will consult with the foreign competent authority as to its interest in joint presentations and notify the taxpayer accordingly.

(5) At the conclusion of the APA team's due diligence and evaluation of a bilateral or multilateral APA request, the APA team leader will provide to the taxpayer a memorandum conveying the substance of the APA team's views on the proposed APA. The memorandum will have a length, content, and format appropriate to the size and complexity of the proposed covered issue(s) and method(s) and other relevant facts and circumstances surrounding the case. The taxpayer will be invited to respond to the

memorandum by a deadline set by the APA team leader.

.04 *Finalizing the APA.* In the case of a unilateral APA, the APA team and taxpayer will proceed to finalize an APA after the APA team has completed its due diligence and evaluation of the APA request. In the case of a bilateral or multilateral APA, the APA team and the taxpayer will proceed to finalize an APA after a MAP resolution has been reached in the case.

.05 *Arbitration.* The mutual agreement procedure article in arbitration treaties requires that the competent authorities refer certain cases to mandatory arbitration in the event direct consultation does not lead to a mutual agreement within a prescribed time period. Taxpayers requesting bilateral or multilateral APAs should consult the mutual agreement procedure article under the applicable U.S. tax treaty and any ancillary agreements to determine whether it is an arbitration treaty and the extent to which mandatory arbitration applies to cases initiated by bilateral or multilateral APA requests under such treaty. See section 12 of Rev. Proc. 2014-XX.

.06 *Execution of Agreement.* The APA will enter into force as of the date it is executed by APMA and by the taxpayer and have effect as provided therein. In the case of an APA that includes a member of a consolidated group other than the common parent (as defined in Treas. Reg. §1.1502-1), the common parent must also sign the APA as provided in Treas. Reg. §1.1502-77. The person signing the APA must be an authorized officer of the taxpayer, have personal knowledge of the APA's covered issue(s), covered method(s), and terms and conditions, perform duties not limited to obtaining letter rulings or determination letters from the IRS or entering into APAs, and

have authorization to sign the taxpayer's income tax return pursuant to section 6062 of the Code. The person signing for any non-corporate taxpayer must be an individual having personal knowledge of the APA's covered issue(s), covered method(s), and terms and conditions and have authorization to sign the taxpayer's income tax return pursuant to sections 6061 or 6063 of the Code, as applicable.

.07 Not an Examination. APMA's evaluation of the APA request will not constitute an examination or inspection of the taxpayer's books and records under section 7605(b) or other provisions of the Code.

SECTION 5: APA ROLLBACKS AND COORDINATION WITH REV. PROC. 2014-XX

.01 Extension from MAP or ACAP Years to APA Years

(1) Under Rev. Proc. 2014-XX, APMA may propose that a taxpayer pursue ACAP to extend a MAP resolution in its MAP case to one or more ACAP years. APMA may also affirmatively seek of its own accord to roll forward a MAP resolution in a MAP case to the taxpayer's ACAP years where it is feasible, practicable, and in the interest of sound tax administration to do so. APMA may also discuss with the taxpayer the possibility of extending the MAP resolution into APA years. A request to extend a MAP resolution into APA years may be made either by filing a complete APA request or by filing an abbreviated APA request. A taxpayer must file a complete APA request unless it has obtained APMA's permission to file an abbreviated APA request. APMA will grant permission to file an abbreviated APA request only if (i) the taxpayer satisfies the pre-filing requirements set forth in section 3 and detailed in this section 5, and (ii) the applicable law, facts and circumstances, economic conditions, and other relevant

factors surrounding the taxpayer's proposed APA years and proposed APA rollback years are reasonably expected to be substantially the same as such factors surrounding its MAP years or its MAP and ACAP years covered by the MAP resolution. If either of these requirements is not satisfied, the taxpayer must file a complete APA request and otherwise comply with all other provisions of this revenue procedure.

(2) As noted in section 3.02(4), a taxpayer that seeks to file an abbreviated APA request to extend a MAP resolution in a MAP case to APA years must submit a pre-filing memorandum. Among the other required items, the pre-filing memorandum must (i) present the taxpayer's arguments that the applicable law, facts and circumstances, economic conditions, and other factors surrounding its proposed covered issue(s) and method(s) for the proposed APA years and any proposed APA rollback years are substantially the same as those surrounding the MAP resolution in the MAP case, (ii) specify any information, documents, or other materials the taxpayer proposes to omit in its submission, and (iii) discuss the taxpayer's arguments that the information, documents, or other materials the taxpayer proposes to omit from its APA request are not necessary for APMA's evaluation of the APA request.

(3) In accordance with section 3.02(8), APMA will determine whether to hold a pre-filing conference after reviewing the pre-filing memorandum. APMA may determine that no pre-filing conference is required and that an abbreviated APA request will be acceptable. In that event, APMA will provide the taxpayer with instructions on preparing the request. If APMA determines that a pre-filing conference is required, the taxpayer will be expected to discuss the arguments presented in its pre-filing memorandum. If

APMA decides to accept an abbreviated APA request after the pre-filing conference, it will provide the taxpayer with instructions on preparing the abbreviated APA request. If APMA decides that it will not accept an abbreviated APA request, the taxpayer will be instructed to file a complete APA request.

.02 APA Rollbacks

(1) A taxpayer may request an APA rollback to cover one or more of its pre-APA years. An APA rollback request should be included in the taxpayer's APA request. APMA may consider a later request for an APA rollback only if the APA rollback request is submitted in writing within 3 months after the APA request is filed, unless APMA agrees otherwise.

(2) Whether included in the APA request or in a subsequent written request, the APA rollback request must include the same information for the pre-APA years that is required to be submitted for the APA years proposed by the taxpayer.

(3) After coordinating and collaborating with other offices within the IRS, APMA will inform the taxpayer whether its APA rollback request has been accepted.

(4) Regardless of whether the taxpayer pursues an APA rollback request, APMA reserves the right to coordinate with applicable IRS offices to pursue an APA rollback to any or all of the taxpayer's open pre-APA years. In general, APMA will consider taking such action where there is sufficient similarity in relevant facts and circumstances across the taxpayer's APA and pre-APA years. APMA will inform the taxpayer in writing, either before the APA process begins or at any time during the APA process, whether it will pursue an APA rollback and the pre-APA years it will seek to cover. If the

taxpayer refuses to accept an APA rollback, APMA may decline to initiate the APA process or suspend or terminate the process if it has already begun.

(5) An APA rollback request submitted in connection with a bilateral or multilateral APA request and involving a taxable year under the jurisdiction of IRS Appeals will be deemed to constitute a request for SAP review, provided that an affirmative statement requesting SAP review is included in the APA request or in the subsequent written APA rollback request (see the appendix). Any request for SAP review made in connection with an APA request will be subject to the provisions governing SAP review set forth in section 8 of Rev. Proc. 2014-XX.

(6) Except in unusual circumstances, APMA will not accept a rollback to a taxable year whose period of limitations for assessment of tax has expired in the United States.

SECTION 6: LEGAL EFFECT OF THE APA

.01 Binding Agreement. An APA is a binding agreement between the taxpayer and the IRS.

.02 Effect of Compliance. If the taxpayer complies with the APA terms and conditions, the IRS will not contest the application of the covered method(s) to the covered issue(s) of the APA except as provided in this revenue procedure. The taxpayer remains otherwise subject to U.S. income tax laws and applicable U.S. income tax treaties.

.03 Scope of Agreement. An APA will have no legal effect except with respect to the taxpayer, taxable years, and issues to which the APA specifically relates.

.04 Use as Evidence. Unless provided otherwise by written agreement or

regulations, the IRS and the taxpayer may not introduce the APA or non-factual oral and written representations made in conjunction with the APA request as evidence in any judicial or administrative proceeding regarding any tax year, issue, or person not covered by the APA. This paragraph does not preclude the IRS and the taxpayer from agreeing to roll back the APA covered method(s), or the IRS's use of any non-factual material otherwise discoverable or obtained other than in the APA process merely because the parties considered the same or similar material in the APA process.

.05 Use as Admissions. Unless provided otherwise by written agreement or regulations, the IRS and the taxpayer may not introduce a proposed, cancelled, or revoked APA, or any non-factual oral or written representations or submissions made during the APA process, as an admission by the other party, in any judicial or administrative proceeding regarding any taxable year of the requested APA term. This paragraph does not preclude the IRS's use of any non-factual material otherwise discoverable or obtained other than in the APA process merely because APMA and the taxpayer considered the same or similar material in the APA process.

SECTION 7: ADMINISTERING THE APA

.01 Annual Reports

(1) An APA annual report must be filed for each APA year. The report must demonstrate the taxpayer's compliance with the APA terms and conditions, including the amount of any APA primary adjustment for a given APA year. The report must also include all other items required by the APA and disclose any pending or contemplated requests to renew, modify, or cancel the APA. In addition, the report must identify and

correct any materially false, incorrect, or incomplete information submitted during the APA process that the taxpayer discovers during the APA year.

(2) The taxpayer must file two printed copies and one electronic copy of the annual report before the later of (i) the fifteenth day of the twelfth month following the close of the APA year, and (ii) 90 days after the effective date of the APA. APMA may agree to alternative filing dates if requested by the taxpayer. The taxpayer must file all three copies of the annual report with APMA at the address set forth in the appendix. For bilateral and multilateral APAs, APMA may require the taxpayer to simultaneously file a copy of the annual report with the applicable foreign competent authority(ies).

(3) The taxpayer will be notified if it is necessary to clarify or complete the information submitted in the annual report. The taxpayer must supply the additional information by the date specified in the notice.

(4) Any request the taxpayer receives to clarify or complete information in an annual report is not an examination or the commencement of an examination of the taxpayer for purposes of section 7605(b) of the Code or any other provision of the Code.

(5) The taxpayer must amend its annual report within 45 days after becoming aware of any incomplete or incorrect information or any incorrect application of the covered method(s) presented in the report.

(6) APMA may, at its discretion, grant an extension to submit the annual report if the taxpayer provides written notification of its request before the due date and explains the circumstances necessitating the extension.

(7) The annual report must contain the following declarations, as applicable:

Under penalties of perjury, I declare that I have examined this annual report including accompanying documents, and, to the best of my knowledge and belief, this annual report contains all the relevant facts relating to the annual reporting requirements pursuant to the APA, and such facts are true, correct, and complete.

[If applicable: An adjustment to conform taxable income and other relevant items to reflect the results reported herein has been reported to IRS Examination.]

[If applicable: An amended income tax return to conform taxable income and other relevant items to reflect the results reported herein [has been] [will be] filed with the appropriate Internal Revenue Service Center.]

(8) The taxpayer must sign the declaration according to the instructions in the appendix regarding perjury statements.

(9) Failure to file a timely, complete, or accurate annual report may be grounds for canceling or revoking the APA under section 7.06.

.02 APA Repatriation

(1) *Bilateral and Multilateral APAs.* Subject to the requirements of section 7.02(2), APMA will apply the rules and principles set forth in section 11 of Rev. Proc. 2014-XX governing MAP repatriation to determine the terms of APA repatriation for bilateral and multilateral APAs. When MAP repatriation is not agreed to as part of the MAP resolution, APMA will instead determine the terms of APA repatriation for bilateral and multilateral APAs by following the terms under which repatriation payments may be made under Rev. Proc. 99-32.

(2) *Requirements Pertaining to Repatriation in Bilateral or Multilateral APAs.* APMA will not apply the rules and principles set forth in section 11 of Rev. Proc. 2014-XX

governing MAP repatriation to determine the terms of APA repatriation in a bilateral or multilateral APA unless the following conditions are satisfied: (i) no person (whether or not a “United States taxpayer” within the meaning of Rev. Proc. 99-32) that will make or receive repatriation payments would be barred from making or receiving repatriation payments under the principles of section 3.01 or 3.03 of Rev. Proc. 99-32; and (ii) the taxpayer explicitly requests MAP repatriation in its APA request or in a supplemental written submission filed with APMA prior to a MAP resolution being reached in its case.

(3) *Unilateral APAs.* APMA will determine the terms of APA repatriation for unilateral APAs by following the terms under which repatriation payments may be made under Rev. Proc. 99-32.

.03 Examination

(1) With respect to the covered issue(s) in the APA, the IRS will not reconsider the covered method(s) but will instead limit the examination of a taxpayer’s income tax return in any given APA year to, and may require that the taxpayer establish, the following: (i) the taxpayer’s compliance with the APA terms and conditions; (ii) the accuracy of the APA annual report’s material representations; and (iii) the correctness of the supporting data and computations used to apply the covered method(s).

(2) The IRS may audit and propose adjustments to the taxpayer’s results as determined under the covered method(s) of the APA without affecting the APA’s validity or applicability. The taxpayer may agree with the proposed adjustments in the same manner as any other adjustment, in which case the IRS will assess any resulting additional tax or refund any resulting overpayment of tax accordingly. If it does not

agree with the proposed adjustment, the taxpayer may contest it through available administrative and judicial procedures. The taxpayer must include the audit adjustments as finally determined for the purpose of applying the covered method(s). As necessary, it must also make any APA primary adjustments, unless otherwise determined by APMA.

.04 Record Retention

(1) The taxpayer must maintain books and records that are sufficiently detailed to verify that it has complied with the APA terms and conditions. The taxpayer's compliance with this paragraph fulfills the record-keeping requirements of sections 6038A and 6038C of the Code as applied to the covered issue(s).

(2) Upon examination, IRS may request that the taxpayer submit additional information or translate specific documents within 30 days. The IRS may extend this period for good cause. The fact that a non-U.S. jurisdiction may impose a penalty upon the taxpayer or other person for disclosing any such requested material will not constitute reasonable cause for noncompliance with the IRS's request.

.05 Revising the APA

(1) An APA may be revised by agreement of the parties (including the foreign competent authority(ies) in the case of a bilateral or multilateral APA) and any such revision is effective upon the date of the execution of the revision. APMA may agree to revise an APA in lieu of canceling or revoking it.

(2) If APMA agrees to revise a bilateral or multilateral APA, it will submit the revised APA to obtain the consent of the applicable foreign competent authority(ies) to

do the same. If the foreign competent authority(ies) refuse(s) to accept the revised APA, or if the competent authorities cannot agree on a revised APA acceptable to all parties, APMA and the taxpayer may agree to (i) apply the existing APA or the revised APA for domestic U.S. purposes to one or more APA years, or (ii) seek to cancel the APA as of a specific date.

.06 Revoking or Canceling the APA

(1) APMA may revoke an APA due to fraud or malfeasance (as defined in section 7121 of the Code), or disregard (as defined in sections 6662(b)(1) and (c) of the Code) by the taxpayer in connection with the APA, including, but not limited to, fraud, malfeasance, or disregard involving (i) material facts in the request or subsequent submissions (including an annual report) or (ii) lack of good faith compliance with the APA terms and conditions.

(2) APMA may cancel an APA due to the taxpayer's misrepresentation, mistake with respect to a material fact, failure to state a material fact, failure to file a timely annual report, or lack of good faith compliance with the APA terms and conditions.

(3) Unless the parties agree to revise the APA, APMA will cancel an APA in the event of a failure of a critical assumption or a material change in governing case law, statute, regulation, or applicable treaty.

(4) For purposes of this section 7.06(1) and (2), APMA will consider facts material if, for example, knowledge of the facts could reasonably have resulted in an APA with significantly different terms and conditions. With respect to annual reports, APMA will consider facts material if, for example, knowledge of the facts would have resulted in (a)

a materially different allocation of income, deductions, or credits than those reported in the annual report, or (b) the failure to meet a critical assumption.

(5) APMA may waive cancellation if the taxpayer can show good faith and reasonable cause and agrees to make all adjustments proposed to correct for the misrepresentation, mistake regarding a material fact, failure to state a material fact, or noncompliance.

(6) If APMA revokes an APA, the revocation relates back to the first day of the first APA year. The IRS may (a) determine deficiencies in income taxes and additions thereto; (b) deny relief under Rev. Proc. 99-32; (c) allow the taxpayer relief under Rev. Proc. 99-32, but determine the interest on any account receivable established under section 4.01 of Rev. Proc. 99-32 without mutual agreement or correlative relief; (d) revoke the APA as an "egregious case" under Rev. Rul. 80-231, 1980-2 C.B. 219, to deny the taxpayer a foreign tax credit; and (e) deny a request for relief submitted under Rev. Proc. 2014-XX. APMA will seek to coordinate these or any other action concerning revocation of a bilateral or multilateral APA with the foreign competent authority(ies).

(7) APMA's cancellation of an APA generally is effective as of the beginning of the taxable year in which the critical assumption failed or the beginning of the year to which the misrepresentation, mistake regarding a material fact, failure to state a material fact, or noncompliance relates. If, however, the cancellation results from a change in case law, statute, regulation, U.S. income tax treaty, or coordination agreement, the cancellation generally is effective at the beginning of the year that contains the effective

date of the change in case law, statute, regulation, U.S. income tax treaty, or coordination agreement.

(8) For periods following the effective date of the cancellation, the APA has no further force and effect with respect to the IRS and the taxpayer for U.S. income tax purposes. APMA will seek to coordinate any action concerning the cancellation of a bilateral or multilateral APA with the foreign competent authority(ies).

.07 Change in Case Law, Statute, Regulation, or Treaty. If applicable U.S. case law, statutes, regulations, or treaties change the federal income tax treatment of any matter covered by the APA, the new case law, statute, regulation, or treaty provision supersedes any inconsistent terms and conditions of the APA.

SECTION 8: RENEWING THE APA

.01 General. A request to renew a current APA may be made either by filing a complete APA request or by filing an abbreviated APA request. A taxpayer must file a complete APA request unless it has obtained APMA's permission to file an abbreviated APA request. APMA will grant permission to file an abbreviated APA request only if (i) the taxpayer satisfies the pre-filing requirements set forth in section 3 and detailed in this section 8, and (ii) the applicable law, facts and circumstances, economic conditions, and other relevant factors surrounding the covered issue(s), covered method(s), and terms and conditions of the current APA are reasonably expected to be substantially the same as those in the proposed renewal APA years. If either of these requirements is not satisfied, the taxpayer must file a complete APA request and otherwise comply with all other provisions of this revenue procedure.

.02 Timing. Taxpayers are encouraged to file a request to renew a current APA nine months before the expiration of the final APA year.

.03 Pre-filing Memorandum Requirement for Abbreviated APA Requests. As noted in section 3.02(4), a taxpayer that seeks to file an abbreviated APA request to renew an APA must submit a pre-filing memorandum. Among the other required items, the pre-filing memorandum must (i) present the taxpayer's arguments that the applicable law, facts and circumstances, economic conditions, and other factors surrounding its proposed covered issue(s) and method(s) for the proposed APA years are substantially the same as those surrounding the current APA, (ii) specify any information, documents, or other materials the taxpayer proposes to omit from its submission, and (iii) discuss the taxpayer's arguments that the information, documents, or other materials the taxpayer proposes to omit from its APA request are not necessary for APMA's evaluation of the APA request.

.04 Actions Taken on APA Renewal Requests. In accordance with section 3.02(8), APMA will determine whether to hold a pre-filing conference after reviewing the pre-filing memorandum. APMA may determine that no pre-filing conference is required and that an abbreviated APA request will be acceptable. In that event, APMA will provide the taxpayer with instructions on preparing the abbreviated APA request. If APMA determines that a pre-filing conference is required, the taxpayer will be expected to discuss the arguments presented in its pre-filing memorandum. If after the pre-filing conference APMA decides that an abbreviated APA request is acceptable, it will provide the taxpayer with instructions on preparing the request. If APMA decides that it will not

accept an abbreviated APA request, the taxpayer will be instructed to file a complete APA request.

SECTION 9: DISCLOSURE

.01 Confidentiality. An APA, any background information relating to an APA, and the taxpayer's APA request and any supplementary materials submitted in conjunction with the APA request are return information and are confidential. See sections 6103, 6105, 894, and 7852(d) of the Code.

.02 Not "Written Determinations". An APA, background information related to the APA, an APA request, and supplementary materials submitted in conjunction with the APA request are not "written determinations" and are not open to public inspection. See section 6110 of the Code.

.03 Statutory Report. The Secretary must prepare an annual report for public disclosure. See section 521(b) of the Ticket to Work and Work Incentives Improvement Act of 1999, Pub. L. 106-170, 113 Stat. 1860, 1925. That report includes specifically designated information concerning all APAs, in a form that does not identify taxpayers, their trade secrets, or proprietary or confidential business or financial information.

.04 Exchange of Information. APAs, annual reports, and factual information contained in APA requests are subject to exchange of information under U.S. income tax treaties or U.S. income tax information exchange agreements in accordance with the terms of such treaties and agreements (including terms regarding relevancy, confidentiality and the protection of trade secrets). In cases in which the exchange of information would be discretionary, information may be exchanged to the extent

consistent with sound tax administration and the practices of the relevant foreign competent authority.

SECTION 10: EFFECT ON OTHER DOCUMENTS

Rev. Procs. 2006-09, 2006-1 C.B. 278, and 2008-31, 2008-1C.B. 1133, are modified and superseded by this revenue procedure. Rev. Proc. 2014-XX is amplified.

SECTION 11: EFFECTIVE DATE

This revenue procedure will apply to all APA requests, including requests for renewal, received on or after [DATE]. By agreement, this revenue procedure may apply to any APA resulting from an APA request pending on [DATE].

SECTION 12: PAPERWORK REDUCTION ACT

The collection of information contained in this revenue procedure has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545 - 1503.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

The collection of information in this revenue procedure is in sections 3.02, 3.04, 3.10, 3.11, 5.01, 7.01, 7.04, 8.01 and 8.03 and in the appendix. This information is required, and will be used, to provide the IRS sufficient information to evaluate and process the APA request or to determine whether the taxpayer is in compliance with the terms and conditions of an APA. APMA will use this information to evaluate the proposed covered method(s) and the taxpayer's compliance with the terms and

conditions of any APA to which it is a party. The collection of information is required to obtain an APA. The likely respondents are business or other for-profit institutions.

The estimated total annual reporting and/or recordkeeping burden is 10900 hours.

The estimated average burden for an APA pre-filing conference is 10 hours; the estimated average burden for an APA request is 60 hours; and the estimated average burden for preparation of an annual report by a party to an APA is 15 hours. The estimated number of respondents and/or recordkeepers is 390.

The estimated annual frequency of responses is one request or report per year per applicant or party to an APA, except that a taxpayer requesting an APA may also submit a pre-filing memorandum.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally tax returns and tax return information are confidential, as required by section 6103 of the Code.

DRAFTING INFORMATION

The principal authors of this document are John Hughes and Rebecca Kalmus of the Office of the Deputy Commissioner (International), LB&I; and Angela Holland of the Office of the Associate Chief Counsel (International). For further information regarding this revenue procedure, please contact Ms. Kalmus at (202) 515-4746 or Ms. Holland at (202) 927-0436 (not toll free numbers).

APPENDIX

This appendix sets forth instructions on preparing and filing an APA request. Unless APMA has explicitly instructed the taxpayer in writing to file an abbreviated APA request pursuant to section 5 or 8 of this revenue procedure, the APA request must be prepared and submitted according to the instructions provided in this appendix. APMA may reject an APA request that does not comply with these instructions.

A complete APA request will provide the information specified below and all other information reasonably necessary to permit the APA team to evaluate fully the proposed covered method(s). The level of detail required will depend on the facts and circumstances of each case and will be governed by relevancy and materiality considerations (keeping in mind that the APA request should provide enough information to allow the reader to concur that a matter is not relevant or material). The information in the APA request should be tailored to the facts relating to the proposed covered group, the proposed covered issue(s) (including information supporting the inclusion of any proposed APA rollback years), and relevant legal authority. It should also take into account discussions with APMA in any pre-filing memorandum or pre-filing conference.

Section 1 of this appendix addresses the required content of APA requests. Section 2 sets forth instructions on submitting printed and electronic copies of APA

requests. Section 3 presents instructions on paying user fees for APA requests. Section 4 provides addresses and contact information.

SECTION 1. CONTENT OF APA REQUESTS

.01 *General.* An APA request must include a cover letter followed by the exhibits presented in the order as listed in this section. An original of the cover letter, signed and dated by the taxpayer or the taxpayer's authorized representative, must be included in one of the three required printed copies of the APA request (see section 2 of this appendix). If the taxpayer's authorized representative signs the original of the cover letter, the taxpayer and authorized representative must satisfy the relevant instructions on signatures in Rev. Proc. 2005-1, 2005-1 I.R.B. 1 (or its successor). The cover letter and the exhibits must contain or respond to the required statements, descriptions, explanations, and other requested information. If the requested information is not applicable to the APA request, a suitable explanation must be provided.

.02 *Cover Letter.* The cover letter to the APA request must be presented according to the instructions and structure set forth below.

Part 1. Executive Summary

1.1	<u>Identifying information:</u> List the name, address, and taxpayer identification number(s) of each member of the proposed covered group and the Standard Industrial Classification ("SIC") and the North American Industry Classification System ("NAICS") codes (number and code description) of the controlled group as reported on the taxpayer's most recently filed federal tax returns
1.2	<u>Summary of APA request:</u> Provide an executive summary of the content of the APA request that addresses the following: a. Whether the taxpayer proposes a unilateral APA or a bilateral or multilateral APA, and, if applicable, the U.S. tax treaty(ies) and treaty articles governing the APA request;

	<ul style="list-style-type: none"> b. Whether the APA request proposes a renewal of an existing APA or the extension of a MAP resolution from MAP or ACAP years into APA years; c. The proposed APA years and the proposed APA rollback years; d. The proposed covered issue(s) and an estimated dollar value of such issue(s) in the proposed APA years and, if relevant, the dollar values of the proposed covered issue(s) in the prior three pre-APA years; and e. The proposed covered method(s), including, as applicable, the proposed tested party(ies), profit level indicator(s), and interquartile range(s)
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Part 2. Administrative Information

2.1	<u>Authorization:</u> List the names of and contact information for all individuals authorized by a Form 2848 to represent the taxpayer in connection with the APA request and all individuals authorized by a Form 8821 to inspect or receive confidential tax information about the taxpayer in connection with the APA request, along with a designation as to which individual will serve as the point of contact for the APA team
2.2	<u>IRS Office:</u> Identify the IRS office having examination jurisdiction over the taxpayer, together with the name of and contact information for the taxpayer's IRS Examination team manager if the taxpayer is under examination when the APA request is filed
2.3	<u>Filed Years:</u> Provide a table with the following information for each member of the proposed covered group: <ul style="list-style-type: none"> a. All open filed years in the United States and the relevant treaty country(ies), whether or not such years are currently under examination by the IRS or a foreign tax authority; b. All open filed years in which a proposed covered issue or a substantially similar issue is under review by IRS Appeals or its equivalent in the relevant treaty country(ies); c. All open filed years in which an actual or proposed adjustment has been made by either the IRS or a foreign tax authority relating to the proposed covered issue(s) or to substantially similar issues; and d. The expiration dates of statutes of limitations for all open filed years in the United States and in the relevant treaty country(ies)
2.4	<u>Request for SAP Review:</u> If applicable, include a statement that the APA request is intended to serve as a request for SAP review for such taxable years specified by the taxpayer pursuant to section 5.02(5) of this revenue procedure

Part 3. Proposed Covered Issue(s)

3.1	<p><u>Pre-filing information:</u> Provide the following information:</p> <ul style="list-style-type: none"> a. Whether a mandatory or optional pre-filing memorandum was filed; and b. Whether a pre-filing conference was held and, if so, the date of and attendees at the conference
3.2	<p><u>APA rollback:</u> Provide the following information:</p> <ul style="list-style-type: none"> a. If the taxpayer is seeking consideration of an APA rollback, list the open pre-APA years to which the APA rollback would apply; and b. If the taxpayer is not seeking consideration of an APA rollback to one or more of its open pre-APA years, discuss the reasons as to why an APA rollback is not appropriate
3.3	<p><u>Background on proposed covered group:</u> Provide background on the following points, with reference to the covered issue diagrams:</p> <ul style="list-style-type: none"> a. The general history of the business operations of the proposed covered group and of the controlled group; b. The worldwide gross revenue of the controlled group in the most recent taxable year available; c. The functional currency of each member of the proposed covered group; d. For each member of the proposed covered group, any business line(s) that is (are) outside the scope of the proposed covered issue(s); and e. The industry in which the proposed covered group operates, including discussion of relevant macroeconomic and other industry-wide factors affecting the proposed covered group, the commercial features of the markets and geographical areas in which the proposed covered group operates, and the participants and competitors in the proposed covered group's industry
3.4	<p><u>Covered issue diagrams:</u> Provide a detailed discussion of each proposed covered issue with reference to the covered issue diagrams:</p> <ul style="list-style-type: none"> a. The functions performed by each member of the proposed covered group in relation to the proposed covered issue; b. The assets employed by each member of the proposed covered group in relation to the proposed covered issue; c. The risks assumed by each member of the proposed covered group in relation to the proposed covered issue; d. Transactional or commercial flows between and among members of the proposed covered group, between members of the proposed covered group and customers and other uncontrolled

	<p>parties, and between members of the proposed covered group and members of the controlled group outside of the proposed covered group;</p> <p>e. Principal intercompany contracts or other agreements, written or otherwise, between and among members of the proposed covered group; and</p> <p>f. Unless the proposed covered method involves a profit split (within the meaning of Treas. Reg. § 1.482-6 or Chapter II of the OECD Guidelines) between two or more members of the proposed covered group, the identity of the member of the controlled group that is proposed to be regarded as the principal in relation to the proposed covered issue, whether or not it is a member of the proposed covered group</p>
3.5	<p><u>Rulings, determinations, and proceedings:</u> Provide information on the following:</p> <p>a. Current or expired rulings issued by a relevant foreign tax authority covering intercompany transactions or business activities of members of the proposed covered group that are within the scope of the proposed covered issue(s);</p> <p>b. The terms of any MAP resolution of a MAP case addressing intercompany transactions or business activities of members of the proposed covered group that are within the scope of the proposed covered issue(s); and</p> <p>c. Any judicial or administrative proceedings in the United States or in the relevant treaty country(ies) to which any members of the proposed covered group are or have been parties involving intercompany transactions or business activities that are within the scope of the proposed covered issue(s)</p>
3.6	<p><u>Ancillary issues:</u> List the ancillary issues (if any) included in or among the proposed covered issue(s) of the APA request, e.g., terms of APA repatriation</p>

Part 4. Proposed Covered Method(s)

4.1	<p><u>Selection of proposed covered method(s):</u> Discuss the selection of the proposed covered method(s) with reference to the standards governing the selection of the “best method” under Treas. Reg. § 1.482-1(c) and, in the case of bilateral or multilateral APA requests, the selection of the “most appropriate” method under Chapter I of the OECD Guidelines</p>
4.2	<p><u>Search and screening process:</u> Describe the research and screening process and criteria used to identify and select independent comparable agreements or independent companies upon which the</p>

	proposed covered method is based, including the initial search universe, the qualitative and quantitative screens used to accept or reject potential comparable agreements or companies, and the numbers of potential comparable agreements or companies accepted and rejected at the different stages of the search and screening process
4.3	<u>Adjustments within proposed covered method(s)</u> : Provide a detailed explanation of any adjustments made to the selected proposed comparable agreements or results of independent companies or to the results of the tested party, such as adjustments relating to product line segregations; differences in accounting practices; differences in functions performed, assets employed, or risks assumed; volume or scale differences; or differences in economic or market conditions
4.4	<u>Demonstration of proposed covered method(s)</u> : Provide a table summarizing the results of applying the proposed covered method(s) to the relevant members of the proposed covered group for (i) the most recent three pre-APA years (or to as many pre-APA years as are available, if fewer than three are available), (ii) the first proposed APA year, and (iii) to the extent available, forecasted data of the relevant members of the proposed covered group for the proposed APA years
4.5	<u>Segmentation of financial results</u> : If the proposed covered method(s) is(are) applied to a subset of the assets, liabilities, income, and expenses in the financial statements (<u>see</u> Exhibit 17), provide a segmentation of the financial statements and describe in detail (i) those items in the segmented financial statements that have been allocated or apportioned to the applicable proposed covered issue(s) and to other issues, and (ii) the method(s) of allocation or apportionment applied

Part 5. Proposed APA Terms and Conditions

5.1	<u>Review of Proposed APA</u> : Provide a detailed discussion and explanation of the proposed APA terms and conditions as reflected in the draft APA submitted with the APA request, noting, in particular, any proposed APA terms and conditions that differ from the APA terms and conditions as reflected in the model APA available on the APMA website [link to be provided when available]
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.03 *Exhibits*. The APA request must also include the following exhibits after the cover letter, separated and ordered as indicated. While all of the exhibits must be

included as part of a complete APA request, certain exhibits are required to be produced in both printed and electronic forms; other exhibits need be produced only in electronic form (see section 2 of this appendix).

Exhibit 1	<u>Contents of exhibits</u> : Provide a table or similar comprehensive list of the exhibits submitted in both printed and electronic form and those submitted in only electronic form
Exhibit 2	<u>Authorization form</u> : Include a properly executed Form 2848 (Power of Attorney and Declaration of Representative) or Form 8821 (Tax Information Authorization)
Exhibit 3	<u>Protective claim</u> : In the case of a bilateral or multilateral APA request, provide a statement affirming whether the APA request is to serve as a protective claim pursuant to section 13 of Rev. Proc. 2014-XX and, if so, include the information required by section 13.02(3) of Rev. Proc. 2014-XX
Exhibit 4	<p><u>Waiver of ex parte communication</u>: If the APA request involves a rollback to pre-APA years in which the proposed covered issue(s) or a related issue is unresolved and under consideration by IRS Appeals, include a waiver, modeled on the following language, of the taxpayer’s right to be present during communications between IRS Appeals and members of the APA team:</p> <p style="padding-left: 40px;">Waiver of Ex Parte Communication: [Name of taxpayer(s)] agrees to the participation of IRS Appeals in the consideration of this APA request and hereby waives its right to be present during, or to participate in, meetings relating to the APA request or to be a party to discussions concerning the proposed covered issue(s) between IRS Appeals and members of the APA team</p>
Exhibit 5	<u>Consent to disclosure</u> : In the case of a bilateral or multilateral APA request, include a declaration, dated and signed by an authorized officer of the taxpayer having personal knowledge of the facts concerning the proposed covered issue(s), that the taxpayer consents to the disclosure of the contents of the APA request – other than trade secrets, if the taxpayer so requests – to the applicable foreign competent authority(ies) within the limits contained in the U.S. tax treaty(ies) governing the APA request
Exhibit 6	<u>“Penalties of perjury” declaration</u> : Include the following “penalties of perjury” declaration:

	<p>Under penalties of perjury, I declare that I have examined this [APA request] [supplemental submission relating to this APA request], including accompanying documents, and, to the best of my knowledge and belief, the [APA request] [supplemental submission] contains all the relevant facts relating to the [APA request] [supplemental submission], and such facts are true, correct, and complete.</p> <p>The declaration must be signed by the taxpayer on whose behalf the request is being made and not by the taxpayer's representative. The person signing for a corporate taxpayer must be an authorized officer of the taxpayer who has personal knowledge of the facts, whose duties are not limited to obtaining letter rulings or determination letters from the IRS or negotiating APAs, and who is authorized to sign the taxpayer's income tax return pursuant to section 6062 of the Code. The person signing for any non-corporate taxpayer must be an individual who has personal knowledge of the facts and who is authorized to sign in accordance with sections 6061 or 6063 of the Code, as applicable</p>
Exhibit 7	<u>E-mail authorization</u> : Include a signed original of the memorandum of understanding authorizing communications with APMA via e-mail; or a statement that the taxpayer does not authorize e-mail communications, together with a brief explanation for its declining to do so (<u>see</u> section 3.06 of this revenue procedure)
Exhibit 8	<u>User fee receipt</u> : Include a copy of the receipt obtained after paying the required APA user fee (<u>see</u> section 3 of this appendix)
Exhibit 9	<u>Documents submitted to foreign competent authorities</u> : List all information or documents submitted to a foreign tax authority or foreign competent authority in connection with the APA request, either prior to or concurrently with the submission of the APA request to APMA, noting the information or documents for which English translations are available and any information or documents submitted to a foreign tax authority or foreign competent authority in connection with the APA request that are not included in the APA request submitted to APMA
Exhibit 10	<u>Pre-filing Submissions</u> : Include any pre-filing memoranda or other materials submitted in connection with the APA request
Exhibit 11	<u>Covered issue diagrams</u> : Include diagrams, charts, or similar representations depicting the following information, each presented in a manner similar to and with a degree of detail no less than that

	<p>presented in the diagrams accompanying the case studies “Alpha” through “Foxtrot” in Joint Committee on Taxation, <i>Present Law and Background Related to Possible Income Shifting and Transfer Pricing</i> (JCX-37-10), July 20, 2010 (available at www.jct.gov; see also APMA website [link to be included when available]):</p> <ol style="list-style-type: none"> a. The controlled group’s legal structure, with clear indications as to the members of the proposed covered group; b. The controlled group’s tax structure, with clear indications as to, among other items, ownership relationships and tax filing characterizations of members of the proposed covered group under the Code and under applicable rules in the relevant treaty country(ies) (e.g., partnerships, branches, or disregarded entities); c. The controlled group’s and proposed covered group’s business units or similar organizational divisions as used for management purposes, together with a table or other reconciliation showing the relationship between such business units and the legal entities comprising the controlled and proposed covered groups; d. The value chain of the proposed covered group, comprising commercial or transactional flows between and among members or business units of the proposed covered group, between members or business units of the proposed covered group and customers and other uncontrolled parties, and between members or business units of the proposed covered group and any other members or business units of the controlled group outside the proposed covered group; e. Organization or similar charts identifying executive-level functional or occupational roles within the business units or within members of the proposed covered group that are relevant to the proposed covered issue(s) (e.g., vice president of marketing for transactions involving sales of tangible goods), together with (i) the names of individuals occupying such executive-level functional roles at the time the APA request is filed, and (ii) headcounts for the relevant business units or members of the proposed covered group; and f. Intercompany contracts or agreements, whether written or implied, between and among members of the proposed covered group and between and among members of the proposed covered group and members of the controlled group outside the proposed covered group
Exhibit 12	<p><u>APAs</u>: Include a copy of any prior or current APA the taxpayer or another member of the proposed covered group has entered into with the IRS or with a foreign tax authority involving intercompany</p>

	transactions or business activities within the scope of the proposed covered issue(s)
Exhibit 13	<u>Selection process</u> : Provide a table or similar report on the step-by-step results of applying criteria for selecting comparable agreements or independent comparable companies (<u>see part 4.2</u>)
Exhibit 14	<u>Information on selected comparables</u> : Include a detailed discussion or detailed presentation, as applicable, of the following: the contractual terms (within the meaning of Treas. Reg. § 1.482-1(d)(3)(ii)) of selected comparable agreements, including the form of consideration charged or paid; and for APA requests in which the proposed covered method(s) involve(s) an application of the comparable profits method (as defined in Treas. Reg. § 1.482-5) or the transactional net margin method (as defined in the OECD Guidelines), (i) unadjusted income statement data for the most recent five taxable years (or as many years as are available, if fewer than five years are available) and balance sheet data for the most recent six taxable years (or as many years as are available, if fewer than six years are available) of the selected independent comparable companies, and (ii) (if applicable) the application to such financial data of any adjustments pursuant to the proposed covered method(s) (<u>see parts 4.3 and 4.4</u>)
Exhibit 15	<u>Application of APA template</u> : For APA requests in which the proposed covered method involves an application of the comparable profits method (as defined in Treas. Reg. § 1.482-5) or the transactional net margin method (as defined in the OECD Guidelines), provide income statement data for the most recent five taxable years (or as many years as are available, if fewer than five years are available) and balance sheet data for the most recent six taxable years (or as many years as are available, if fewer than six years are available) for the relevant member(s) of the proposed covered group in the APA template (available on the APMA website [link to be included when available])
Exhibit 16	<u>Federal income tax filings</u> : Provide copies of the following federal income tax forms for each of the three most recent filed years of the taxpayer: <ul style="list-style-type: none"> a. Form 1120 or applicable equivalent; b. Form 5471 (“Information Return of U.S. Persons With Respect to Certain Foreign Corporations”); c. Form 5472 (“Information Return of a 25% Foreign-Owned U.S. Corporation or a Foreign Corporation Engaged in a U.S. Trade or Business”); and d. Form 8858 (“Information Return of U.S. Persons With Respect to Foreign Disregarded Entities“)

Exhibit 17	<u>Financial statements</u> : Provide copies of financial statements (audited, if available) for each relevant member of the proposed covered group for each of the most recent three pre-APA years and specify the accounting standard used (e.g., U.S. GAAP)
Exhibit 18	<u>Section 6662 documentation</u> : Include a copy of the documentation prepared in consideration of section 6662(e) of the Code relating to intercompany transactions or business activities that are within the scope of the proposed covered issue(s) for each relevant member of the proposed covered group for each of the most recent three pre-APA years
Exhibit 19	<u>Regulatory filings</u> : Include a copy of the Form 10-K or similar annual SEC filing submitted for U.S. regulatory purposes by the controlled group for each of the most recent three pre-APA years
Exhibit 20	<u>APA annual reports</u> : For renewal APA requests, provide all APA annual reports filed with APMA with respect to the current APA
Exhibit 21	<u>Proposed draft APA</u> : Provide a proposed draft APA in a form substantially similar to APMA's current model APA (available on the APMA website [link to be included when available]), together with a "redline" version of the same showing the differences between the model APA and the proposed draft APA
Exhibit 22	<u>Intercompany agreements</u> : Include copies of intercompany contracts or agreements between the taxpayer and other members of the proposed covered group that are within the scope of the proposed covered issue(s)

SECTION 2. MANNER AND MEDIA OF APA REQUEST FILINGS

.01 *General*. The taxpayer must provide four copies of its APA request as follows: one (1) original, bound printed submission containing signed originals of the cover letter and "penalties of perjury" declaration and, as applicable, of the authorization forms, consent to disclosure, and e-mail authorization, together with copies of all other required printed information; two (2) bound photocopies of the contents of the original printed submission; and one (1) electronic copy of the contents of the original printed submission, together with the required electronic-only attachments, on CD or flash drive or similar acceptable electronic storage medium. All four copies of the APA request

must be filed with APMA at the address set forth in section 4 of this appendix.

.02 Contents and Format of Printed Submissions. Each printed copy of the APA request must contain (i) the cover letter to the APA request, and (ii) Exhibits 1 through 11. If possible, each printed copy should contain all such content in a single, bound volume. The exhibits must be tabbed or separated and identified and ordered as presented in section 1 of this appendix. If an exhibit is not applicable to the APA request, a statement to this effect must be included in the relevant tabbed section.

.03 Contents and Format of Electronic Copy.

(1) The electronic copy of the APA request must contain (i) the cover letter to the APA request, and (ii) Exhibits 1 through 22. The exhibits should consist of separate electronic files named in a manner that corresponds to the exhibit numbers presented in section 1 of this appendix. If an exhibit is not applicable to the APA request, a statement to this effect must be included in the electronic file.

(2) The electronic copy of the APA request must include the cover letter to the APA request in both Microsoft Word (“Word”) and in Adobe Portable Document (“.pdf”) formats. Exhibit 21 must be provided in Word format. All other exhibits readily available in Word or Microsoft Excel (“Excel”) format should be provided in those forms, as applicable, instead of, or in addition to, .pdf format.

(3) All electronic documents provided in conjunction with an APA request and throughout the APA process must be searchable, unless the file is not readily available in searchable form (e.g., a photocopy of an intercompany agreement).

(4) All documents presented in Excel format must be provided with formulas and

linkages intact.

SECTION 3. USER FEES

.01 *General.* User fees must be paid through the Pay.gov website. Instructions on making user fee payments are available on the IRS website at

[http://www.irs.gov/Individuals/International-](http://www.irs.gov/Individuals/International-Taxpayers/ChangeToAPAandLOBUserFeeFilingProcedures)

[Taxpayers/ChangeToAPAandLOBUserFeeFilingProcedures](http://www.irs.gov/Individuals/International-Taxpayers/ChangeToAPAandLOBUserFeeFilingProcedures). APMA will not consider an APA request complete, and will hold the APA request in suspense, until the correct user fee is paid through the Pay.gov website.

.02 *Separate Fees.* Subject to the provisions of this section, a separate user fee is required for each unilateral, bilateral, or multilateral APA request.

.03 *Amounts.* The user fee amounts are as follows:

- (1) \$50,000 for each unilateral, bilateral, or multilateral APA request;
- (2) \$35,000 for each renewal APA request;
- (3) \$22,500 for each APA request eligible for the small case APA user fee; and
- (4) \$10,000 for each amendment to a current unilateral, bilateral, or multilateral

APA

.04 *Small Case APA User Fee Eligibility.* An APA request is eligible for the small case APA user fee only if all of the following apply: (i) the controlled group has sales revenues, within the meaning of Treas. Reg. §1.482-5(d)(1), of less than \$500 million in each of its most recent three pre-APA years; (ii) the aggregate value of the proposed covered issue(s) is not expected to exceed \$50 million in any given year of the proposed APA years; (iii) the aggregate value of any transfer of rights in, or rights to

use, intangibles is not expected to exceed \$10 million in any given year of the proposed APA years; and (iv) no proposed covered issue involves intangible property arising from, or otherwise related to, an intangible development arrangement.

.05 *Fees for Amendments.* For purposes of section 3.03 of this appendix, an amendment includes coverage of additional issues or other determinations and material changes to a proposed covered method. APMA will not impose this amendment fee if APMA or a foreign competent authority initiates the request to amend the proposed covered issue(s) or method(s).

SECTION 4. ADDRESSES AND CONTACT INFORMATION

Phone number: TBD

Mailing address: Deputy Commissioner (International)
Large Business and International Division
Internal Revenue Service
1111 Constitution Avenue, N.W.
Routing: M3-370
Washington, DC 20224
(Attention: APMA)

All mail should be sent to this mailing address, including regular mail, express mail, overnight mail, and mail sent by USPS, FedEx, UPS, or any other carrier.

Website: [link to be included when available]

Office location: 801 Ninth Street NW, Washington, DC 20001.

Mail should not be sent to this address.