

Procedures for Advance Pricing Agreements

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

Rev. Proc. 2015-41

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SECTION 1. PURPOSE, BACKGROUND, RULES OF CONSTRUCTION, AND DEFINITIONS

.01 *Purpose and Background.* This revenue procedure provides guidance on the process of requesting and obtaining advance pricing agreements from the Advance Pricing and Mutual Agreement program (“APMA”), a constituent office of the U.S. competent authority, within the office of the Deputy Commissioner International, Large Business & International Division. This revenue procedure also provides guidance on administration of executed 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 Proc. 2008-31, 2008-1 C.B. 1133, which is also superseded. This revenue procedure is being released in conjunction with Rev. Proc. 2015-40, I.R.B. 2015-35, which provides procedures and guidance on the process of requesting assistance from the U.S. competent authority under the provisions of U.S. tax treaties.

A proposed version of this revenue procedure was released for public comment in Notice 2013-79, 2013-2 C.B. 653. This revenue procedure is issued following consideration of all public comments received by the IRS and the Treasury Department and also reflects the continuing internal monitoring and modifications of APMA’s administrative procedures to ensure that the administration of APAs is consistently principled, effective, and efficient.

The principal differences between this final revenue procedure and the proposed version in Notice 2013-79 may be summarized as follows:

- (1) This revenue procedure clarifies that if APMA requires, as a condition of

continuing with the APA process, that the taxpayer expand the proposed scope of its APA request to cover interrelated matters (interrelated issues in the same years, covered issues or interrelated issues in other years, and covered issues or interrelated issues in the same or other years as applied to other countries), APMA will do so with due regard to considerations of principled, effective, and efficient tax administration and only after considering the views of the taxpayer and the applicable foreign competent authority. Further, APMA will communicate to the taxpayer any concerns about interrelated matters and possible scope expansion as early as possible. Examples are provided of interrelated matters. See section 2.02(4).

(2) In the interest of efficient tax administration, rollback years may be formally covered within an APA. A rollback will be included in an APA when a rollback is either requested by the taxpayer and approved after coordination and collaboration between APMA and other offices within the IRS or, in some cases, is required by APMA, after coordination and collaboration with other offices within the IRS, as a condition of beginning or continuing the APA process. See sections 2.02(4)(c), 3.03(2), 3.08, and 5.02.

(3) This revenue procedure provides expanded guidance as to when an APA request will be considered complete. See section 3.03(3).

(4) The required contents of APA requests that were specified in the Appendix of the proposed revenue procedure have been refined but generally retained, which APMA continues to view as necessary to conduct informed and efficient evaluations of APA requests.

(5) As stated in Notice 2013-79, taxpayers are required to execute consent agreements to extend the period of limitations for assessment of tax for each year of the proposed APA term, and the required consent could be either general or restricted. This revenue procedure expressly provides that APMA will coordinate and collaborate with other offices within the IRS and with the taxpayer on the type of consent the taxpayer will be instructed to execute, which, if restricted, will follow standardized language provided by APMA. This revenue procedure also provides that in certain cases, only general consents will be used. See section 2.03(3).

(6) This revenue procedure increases the user fees for APA requests and provides that total user fees may be reduced for multiple APA requests filed by the same controlled group within a sixty-day period. See section 3.03(2) of the Appendix.

(7) This revenue procedure substantially restructures the proposed guidance in Notice 2013-79 to improve clarity, readability, and organization.

.02 Section References and Defined Terms. Unless indicated by context or otherwise, section references are to the sections of this revenue procedure (including the appendices).

.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 legal holiday in the District of Columbia.

.04 Definitions. As used in this revenue procedure, certain acronyms and other terms have the meanings set forth in this section.

Abbreviated APA request	An APA request in which information, documents, or content required for a complete APA request has been truncated or omitted, per explicit authorization from APMA (<u>see</u> section 3.04(2))
ACAP	Accelerated competent authority procedure (<u>see</u> section 4.01 of Rev. Proc. 2015-40)
ACAP request	A request filed under section 4.01 of Rev. Proc. 2015-40 to include ACAP years in a competent authority case
ACAP years	Taxable years covered by an ACAP request or that are eligible for ACAP
Ancillary issue	An issue eligible for coverage by an APA, such as the repatriation of funds (<u>see</u> section 7.01), interest on refunds and deficiencies, and penalties with respect to U.S.-initiated adjustments, that arises out of the resolution of another, underlying covered issue
APA	An advance pricing agreement
APA annual report	The report prepared by the taxpayer 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 by a taxpayer to its results, as shown in its books and records for an APA year and/or reflected in its U.S. return for an APA year, in order to make its reported taxable income consistent with the application of the covered method(s) (<u>see</u> section 7.01)
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 relating to pre-filing conferences and memoranda
APA request	A request for a unilateral, bilateral, or multilateral APA submitted under this revenue procedure
APA team	The IRS team assembled to process an APA request
APA team leader	The taxpayer's primary point of contact within the IRS during the APA process
APA term	The time period consisting of all APA years
APA terms and conditions	The terms and conditions of the APA, including (but not limited to) 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 10 of Rev. Proc. 2015-40
Back year	In relation to an APA, any taxable year ending before the first prospective year; and in relation to a proposed APA, any taxable year ending before the first prospective year as proposed by the taxpayer in its APA request or as determined by APMA, as applicable
Bilateral APA	An APA in which the covered issue(s), covered method(s), and APA terms and

	conditions are premised on an underlying competent authority 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
Closed filed year	A filed year for which the period of limitations for assessment of tax has expired in the United States
Code	The Internal Revenue Code of 1986 (26 U.S.C.), as amended
Competent authority case	A competent authority case, as defined in Rev. Proc. 2015-40, modified for purposes of this revenue procedure to include the consideration of a bilateral or multilateral APA request
Competent authority issue	A competent authority issue, as defined in Rev. Proc. 2015-40, in one or more competent authority years, which includes issues raised by a bilateral or multilateral APA request
Competent authority process	The competent authority process, as defined in Rev. Proc. 2015-40, modified for purposes of this revenue procedure to include the APA process with regard to a bilateral or multilateral APA request
Competent authority request	A competent authority request, as defined in Rev. Proc. 2015-40, modified for purposes of this revenue procedure to include a bilateral or multilateral APA request
Competent authority resolution	A competent authority resolution, as defined in Rev. Proc. 2015-40, modified for purposes of this revenue procedure to include a resolution by the U.S. competent authority and foreign competent authority(ies) (or through arbitration) of covered issue(s) in a case initiated by a

	bilateral or multilateral APA request under this revenue procedure, as appropriate
Competent authority year	A competent authority year, as defined in Rev. Proc. 2015-40, modified for purposes of this revenue procedure to include proposed APA years of a bilateral or multilateral APA request
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 (1) issues arising under section 482 of the Code, (2) other issues for whose resolution transfer pricing principles are relevant, which in a particular case could include (a) issues arising under section 367(d) of the Code, (b) competent authority issues arising under the business profits and associated enterprises articles of U.S. tax treaties, and (c) the determination of the income effectively connected with the conduct of a trade or business within the United States, and (3) ancillary issues
Covered group	The 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, tables, or similar representations, as described more fully in the Appendix, that depict the structure and value chain of the proposed covered group as they relate to the proposed covered issue(s) and (if applicable) interrelated issues
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 resolving the covered issues
Critical assumption	A fact whose continued existence is identified in an APA as being material to the reliability of the APA's covered methods; such fact may be related to the taxpayer, a third party, an industry, or business and economic conditions
Dollar file request	An APA request filed in accordance with the provisions of section 3.03(3)(b)
Effective date of an APA	The first date on which the APA has been executed by both the IRS and the taxpayer
Filed year	A taxable year for which the taxpayer has filed its U.S. return, 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	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, including 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 (or an arrangement treated as such) as defined in Treas. Reg. §1.482-7 or a qualified cost sharing arrangement (or an arrangement treated as such) as defined in Treas. Reg. §1.482-7A (collectively, a "CSA"); and an arrangement (other than a CSA) for which

	the principles, methods, comparability, and reliability considerations set forth in Treas. Reg. §1.482-7 are 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 for purposes of determining tax liability
LB&I	The IRS Large Business & International Division
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 competent authority 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
Open filed year	A filed year for which the period of limitations for assessment of tax has not expired in the United States
Opening conference	Typically, the first meeting between the taxpayer and an APA team after an APA request has been submitted
Pre-filing conference	A conference held with APMA before an APA request is filed (<u>see</u> section 3.02)

Pre-filing memorandum	A memorandum or similar paper submitted to APMA before an APA request is filed (<u>see</u> section 3.02)
Pre-filing requirements	The requirements regarding pre-filing memoranda and pre-filing conferences set forth in section 3.02
Protective claim	A contingent claim filed with the U.S. competent authority as described in section 11 of Rev. Proc. 2015-40 and section 3.06
Prospective year	An APA year that is described as a prospective year in section 3.03(2)
Rev. Proc. 2006-9	Rev. Proc. 2006-9, 2006-1 C.B. 278
Rev. Proc. 2015-40	Rev. Proc. 2015-40, I.R.B. 2015-35
Rollback	The application (with appropriate modifications, if necessary) of the covered method(s) to specific back years (<u>see</u> sections 2.02(4)(c) and 5.02)
Rollback request	A request for a rollback submitted under this revenue procedure
Rollback year	An APA year that is described as a rollback year in section 3.03(2)
SAP review	The review of a competent authority issue by the U.S. competent authority with the assistance of IRS Appeals under the simultaneous appeals procedure described in section 6.04 of Rev. Proc. 2015-40
Small case APA user fee	The user fee required for APA requests that meet the criteria set forth in section 3.04 of the Appendix
Taxpayer	Unless the context indicates otherwise, the member of the covered group that 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 one or more

	U.S. returns during the proposed APA years that will reflect the treatment of covered issues. However, if such a member of the covered group is a member of a consolidated group other than the common parent (as defined in Treas. Reg. §1.1502-1), then the common parent, rather than that member of the consolidated group, is considered to be the “taxpayer.” Further, if there is more than one entity that satisfies the preceding definition of “taxpayer,” then the term “taxpayer” refers collectively to all such entities.
TPO	Transfer Pricing Operations, the director of which reports to the Deputy Commissioner (International), LB&I
Treaty country	A country other than the United States that has a U.S. 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 2.01 of Rev. Proc. 2015-40)
U.S. return	A federal income tax return filed with the IRS pursuant to the Code
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 of a taxpayer
Unilateral APA	An APA in which the covered issue(s), covered method(s), and APA terms and

	conditions are not premised upon an underlying competent authority resolution
Unilateral APA request	A request to enter into a unilateral APA under this revenue procedure

SECTION 2. SCOPE AND GENERAL APPLICATION

.01 Contact Information. APMA may be contacted with general or specific questions about this revenue procedure by one of the means identified in the Appendix. Unless otherwise instructed by APMA, any item (e.g., an APA request or a pre-filing memorandum) that the taxpayer either is required or chooses to file with APMA must be sent to APMA at the address listed in the Appendix.

.02 Principles of Administering APAs.

(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 competent authority 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. tax treaties. (See section 2.01(3) of Rev. Proc. 2015-40.) In accordance with its mission, APMA endeavors to administer the programs within its jurisdiction in a manner that is consistent with U.S. tax treaty obligations and that secures the appropriate tax bases of the United States and its treaty partners, prevents fiscal evasion, promotes consistency and reasonableness in outcomes, and provides taxpayers access to competent authority assistance and to the APA process in accordance with considerations of principled,

effective, and efficient 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. Ancillary issues such as interest and penalties may also be resolved, but only to the extent to which APMA has authority under the Code or under a U.S. tax treaty to resolve the issues. 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 proposed covered 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 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. As such, the APA process is intended to address issues that are ongoing in nature or have already arisen (or, based on firm commitments, are expected to arise). Conversely, the APA process is not available for addressing hypothetical or merely contemplated issues. In particular, the taxpayer will not be permitted to use the APA process to obtain an advance view of the IRS's likely treatment of particular transactions (for example, business restructurings or intangible development arrangements) the taxpayer may be considering.

(3) The APMA Director, directly or by delegation, may take any action – not

contrary to statute, regulation, or treaty – necessary to carry out the intent of this revenue procedure. Such actions include, but are not limited to, declining to initiate or suspending or terminating the APA process (see section 4.02(1)) and modifying the application of provisions contained in this revenue procedure in particular cases (for example, regarding time limits). Such actions are not subject to administrative review.

(4) *Scope of APAs*

(a) *In general.* A taxpayer's APA request will include one or more covered issues, as applied to certain proposed taxable years, and (in the case of bilateral and multilateral APA requests) involving one or more foreign competent authorities. In evaluating the taxpayer's request, in some cases APMA may also need to consider additional, interrelated issues, additional taxable years (including potential rollback years, see sections 2.02(4)(c), 5.02), or additional treaty countries (collectively, interrelated matters) in order to reach a resolution that is in the interest of principled, effective, and efficient tax administration. APMA will endeavor to communicate to the taxpayer any concern about interrelated matters, and any possible need to expand the scope of the APA (as discussed below), as early as possible in the APA process. APMA may do so, for example, when the taxpayer's proposed covered issues are most reliably evaluated together with other issues. See Treas. Reg. §§ 1.482-1(f)(2)(i), 1.482-7(g)(2)(iv). For specific examples of interrelated matters, see section 2.02(4)(b). In cases requiring consideration of interrelated matters, APMA will endeavor to reach a resolution of the taxpayer's proposed covered issues, but only to the extent that such resolution is consistent with the treatment of the identified interrelated matters. Further,

after considering the views of the taxpayer and (if applicable) the foreign competent authority(ies) in such cases, APMA may decide that it is not in the interest of principled, effective, and efficient tax administration to reach a resolution on the taxpayer's proposed covered issues without also reaching a resolution on such identified interrelated matters. In these circumstances APMA may condition its acceptance, continued consideration, or resolution of an APA request upon the agreement of the taxpayer (and, if applicable, of the foreign competent authority(ies)) to expand the scope of the APA.

(b) *Examples of Interrelated Matters.* APMA will always consider the taxpayer's particular facts and circumstances and the scope of the covered issue(s) as proposed in the APA request before deciding that interrelated matters also need to be considered. However, it is possible to identify some common fact patterns in which APMA will be more likely to so decide.

(i) Assume that the taxpayer proposes to cover a company's license of intangible property in certain years to a second company in the same controlled group, when that intangible property had been sold in an earlier year by the second company (the licensee) to the first company (the licensor). In such a case, APMA might consider that the ongoing license should be evaluated in a manner consistent with the evaluation performed for the previous sale (for example, using the same underlying assumptions unless there were specific reasons why certain assumptions would have changed in the interim).

(ii) The taxpayer might propose to cover the compensation for services

provided by one company to a second company in the same controlled group, when providing the services requires using intangible property that had been transferred in an earlier year from the first company to the second company as part of a business restructuring. In such a case, APMA might seek to ensure that the services are valued in a manner consistent with the valuation done in connection with the restructuring, in the absence of some factual reason why the valuations should not be consistent.

(iii) In evaluating a platform contribution transaction (PCT) in a cost sharing arrangement under Treas. Reg. § 1.482-7, APMA might also consider whether the intangible development costs in that arrangement are being properly shared.

(iv) Assume that the taxpayer makes a bilateral APA request to cover sales of goods from a manufacturer in a treaty country to a U.S. distributor that is in the same controlled group, when the U.S. distributor, in turn, resells most of these goods to a distributor in another country (which may or may not be a treaty country) that is in the same controlled group. Before agreeing to a price that the U.S. distributor should pay to the manufacturer, APMA might consider the price that this distributor receives for its resale.

(v) Other examples of types of APA requests that could involve interrelated matters are listed among those for which a pre-filing memorandum is required in section 3.02(4), such as cases involving transactions within a global trading arrangement or involving hybrid entities or entities disregarded for U.S. tax purposes.

(c) *Rollbacks; coordination between APAs and competent authority cases.* An APA is primarily a means to resolve coverable issues for prospective years (as defined

in section 3.03(2)). However, an APA can also be “rolled back” to cover one or more earlier taxable years. When rollback years are included, the APA term will then comprise both rollback years and prospective years (see sections 3.03(2) and 3.08). Rollback years are defined in section 3.03(2), and rollbacks are further discussed in section 5.02. Rollback years need not be, but typically are, the subject of an ongoing or anticipated competent authority case under Rev. Proc. 2015-40. In recognition of these connections, APMA views APAs and competent authority resolutions under Rev. Proc. 2015-40 as being two interconnected means by which taxpayers can manage and address transfer pricing and other cross-border tax issues for which transfer pricing principles may be relevant. Accordingly, APMA will endeavor to address APA requests and competent authority requests under Rev. Proc. 2015-40 in a way that will achieve substantive and procedural consistency between the APA process and the competent authority process under Rev. Proc. 2015-40, and that will provide resolution and certainty across taxable years for taxpayers and the IRS. For example, when warranted by similarity of facts and circumstances across taxable years, APMA will encourage and in some cases require (see section 2.02(4)(a)) a taxpayer to expand the scope of its APA request to include a rollback when a comprehensive resolution of coverable issues would further the interests of principled, effective, and efficient tax administration. Conversely, when a taxpayer that has sought APMA’s assistance for a competent authority case under Rev. Proc. 2015-40, APMA may request (but will not require) that the taxpayer also pursue ACAP to extend the competent authority resolution from that case to cover one or more of its ACAP years (see section 2.04 of Rev. Proc. 2015-40).

In such cases, APMA may also encourage (but will not formally request or require) the taxpayer to further extend the competent authority resolution into an APA as a means of obtaining certainty in future taxable years (see section 2.05 of Rev. Proc. 2015-40).

The relationship between APAs, competent authority cases under Rev. Proc. 2015-40, and ACAP is addressed in more detail in section 5 and in Rev. Proc. 2015-40.

(d) *Preference for Bilateral and Multilateral APAs.* APMA's interest in coordinating APAs and competent authority cases under Rev. Proc. 2015-40 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. If a taxpayer requests a unilateral APA to cover any issue that could be covered under a bilateral or multilateral APA under the applicable tax treaty(ies), the taxpayer must explain in a pre-filing memorandum (see section 3.02(4)) why it believes that a unilateral APA is appropriate to cover that issue. The taxpayer might state, for example, that it believes that there is no APA process with the treaty country, or that the taxpayer's proposed covered issues involve so many treaty countries that the taxpayer believes that bilateral APAs or a multilateral APA would be impractical. After taking into account the taxpayer's views expressed in the memorandum (and in a pre-filing conference if one is held, see section 3.02), APMA will inform the taxpayer whether it will accept a unilateral APA request. APMA may reject a taxpayer's unilateral APA request for various reasons, particularly when accepting it would contravene procedures and practices established with particular treaty partners. Further, even if APMA and a taxpayer sign a unilateral APA,

APMA might subsequently decline to consider a competent authority request for an issue that could reasonably and practically have been covered if the taxpayer had instead pursued a bilateral or multilateral APA. See section 7.02 of Rev. Proc. 2015-40. This would particularly be the case when APMA has already expended resources and fully considered the taxpayer's arguments in reaching a unilateral APA and when a reasonably foreseeable outcome of the competent authority case would be a reduction in US taxable income beyond the level to which APMA and the taxpayer had agreed in the unilateral APA. In the same vein, under the example described in section 2.02(4)(b)(iv), if the taxpayer is unwilling to expand the scope of the APA request to include the competent authority of a second treaty country, and APMA nevertheless is willing to reach an APA, APMA might subsequently decline to consider a MAP request concerning the resale of the goods to the distributor in that second treaty country. In deciding whether to pursue a bilateral or multilateral APA rather than a unilateral APA, or to expand the scope of the APA request to include the competent authority of a second treaty country, taxpayers should bear in mind that a failure to timely request competent authority assistance may adversely affect the availability of the foreign tax credit. See Treas. Reg. §1.901-2(e)(5) and Rev. Rul. 92-75, 1992-2 C.B. 197.

(5) APMA is available for informal consultations with taxpayers within or outside of the APA process. Such consultations may address potential covered issues, and the APA process in general. Statements or representations, whether oral or written, made by APMA in connection with such consultations are informal only and are not binding on the IRS. Such consultations may be by telephone, written, and/or in person. Such

consultations may relate to taxpayers whose identities remain anonymous to APMA, and in such cases may include participation of a taxpayer's officers or employees on an anonymous basis.

.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 explained in section 3.04(1), and (iii) pay the correct user fee, as described in section 3.05 and as instructed in the Appendix.

(2) Throughout the APA process, the taxpayer must supplement its APA request and provide updated information in accordance with sections 3.09 and 3.10.

(3) Throughout the APA process, the taxpayer and the IRS will execute consent agreements as necessary to extend the period of limitations for assessment of tax for each proposed APA year (including both proposed prospective years and proposed rollback years). Each required consent agreement will be either general or restricted, as specified in this section. A restricted consent will not be appropriate for a proposed APA year for which an issue other than the proposed covered issues is under ongoing or potential examination by the IRS.

(a) *Requirement for APA Request.* As of the date the APA request is filed, the remaining period of limitations for assessment of tax for each proposed APA year must be at least two years. If the remaining period of limitations for a proposed APA year is less than two years from such date, then the request must contain an executed general consent to extend the period of limitations for assessment of tax for the proposed APA

year(s) to at least two years.

(b) *Ongoing Requirement.* For each proposed APA year, as the APA process progresses, the taxpayer must submit executed consents to the IRS to extend the period of limitations for assessment of tax as specified in this section 2.03(3)(b). An executed consent must be submitted no later than twelve months before the end of the remaining period of limitations. Unless the taxpayer is otherwise instructed by APMA, each such consent must extend such period by at least one year. In most cases, the taxpayer should submit a general consent for this purpose. However, if there are no issues other than the proposed covered issues under examination by the IRS for a proposed APA year, then the taxpayer may request a restricted consent under this ongoing requirement. Requests for restricted consents must be made in writing no later than fifteen months before the end of the remaining period of limitations, and include the taxpayer's views on why a restricted consent is appropriate in light of its circumstances. APMA will then coordinate and collaborate with other offices within the IRS and inform the taxpayer of the type of consent to be executed (general or restricted). Any restricted consent will be on a form provided by APMA.

(4) An APA request, and an APA, must be signed by each entity that comes within the definition of "taxpayer" in section 1.04. Any requirement in this revenue procedure applicable to the "taxpayer" is applicable to each such entity, except as agreed between APMA and the taxpayer.

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 sometimes 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).

(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 first contact APMA to discuss filing an abbreviated APA request or to discuss any other procedural or substantive issue.

(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 mandatory pre-filing memorandum filed pursuant to section 3.02(4) or an optional pre-filing memorandum filed pursuant to section 3.02(5).

(4) *Mandatory Pre-filing Memoranda.* A pre-filing memorandum that identifies the taxpayer must be filed if:

(a) the taxpayer wishes to file a unilateral APA request to cover an issue that could be covered under a bilateral or multilateral APA under the pertinent tax treaty(ies) (see section 2.02(4)(d));

(b) the taxpayer seeks permission to file an abbreviated APA request pursuant to section 3.04(2); 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) a global trading arrangement, (iii) a business restructuring, or the use of intangibles whose ownership changed as a result of a business restructuring, or (iv) unincorporated branches, pass-through entities, hybrid entities, or entities disregarded for U.S. tax purposes.

This section is not intended to limit anonymous informal consultations with APMA as described in section 2.02(5). For example, a taxpayer might engage in informal consultations as described in section 2.02(5), including submitting an anonymous memorandum, and subsequently file a pre-filing memorandum that identifies the taxpayer and otherwise satisfies the requirements for a mandatory pre-filing memorandum.

(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 generally recommends that a pre-filing memorandum be submitted for APA requests that may present novel or complex substantive or procedural issues, and

APA requests for which APMA could reasonably have concerns regarding interrelated matters (see section 2.02(4)). 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.* A mandatory pre-filing memorandum must have a length and content appropriate to the size and complexity of the covered issue(s) proposed by the taxpayer, and must be primarily in memorandum form but may be accompanied by diagrams, slides, spreadsheets, and similar supporting materials. An optional pre-filing memorandum must have a length and content appropriate to the substantive or procedural issues the taxpayer wishes to raise with APMA, and may be in a format chosen by the taxpayer. Whether mandatory or optional, a pre-filing memorandum must also do the following:

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

(b) Propose at least three possible dates for a pre-filing conference that normally would be at least two weeks after the date that the pre-filing memorandum is submitted, if either the pre-filing memorandum is mandatory (whether or not the taxpayer seeks a pre-filing conference, which might be required by APMA) or the pre-filing memorandum is optional and the taxpayer seeks a pre-filing conference;

(c) Include covered issue diagrams if the pre-filing memorandum is mandatory;

(d) If mandatory and if submitted pursuant to sections 3.02(4)(b) and 3.04(2)(a) to seek permission to file an abbreviated APA request, must (i) specify any information, documents, or other materials the taxpayer proposes to omit from its APA request, (ii) present 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, including if applicable the taxpayer's arguments that the applicable law, facts and circumstances, economic conditions, proposed covered issue(s) and method(s), and other factors relevant to the proposed APA years are substantially the same as those relevant to the current APA or the competent authority resolution as the case may be (see sections 5.01 and 8), and (iii) in the case of a proposed renewal APA, summarize in a table the results and adjustments under the current APA, in absolute and (as applicable) percentage terms (e.g., operating margin), with comparison to any arm's length points or ranges specified in the APA, and also summarize any proposed changes in terms from the current APA;

(e) 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, as necessary, 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

(f) Identify all open back 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. The electronic copy of the pre-filing memorandum must follow the rules for media and format of electronic submissions described in section 2 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. APMA may also require a pre-filing conference to follow a mandatory pre-filing memorandum even if the taxpayer did not request a conference. If APMA decides to hold a pre-filing conference, the conference 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, and (if applicable) the taxpayer's justification for its request to file an abbreviated APA request. If APMA decides against holding a pre-filing conference, it will direct the taxpayer to proceed with its APA request (see section 3.04(2) regarding the situation in which the taxpayer has sought permission to file an abbreviated APA request).

(b) Unless the taxpayer has submitted a mandatory pre-filing memorandum pursuant to section 3.02(4), which requires identification of the taxpayer, or has otherwise identified the taxpayer, 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 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 are informal and are, therefore, not binding on the IRS (see section 2.02(5)).

.03 *Time for Filing.*

(1) *In General.* APAs are intended to apply primarily to prospective years, as defined in section 3.03(2). APMA normally expects an APA request to be filed early enough such that the proposed APA term would cover at least five prospective years (see section 3.08). This section 3.03 gives rules applicable to filing deadlines and determinations. These rules reference section 3.04, which provides guidance on the content and form of complete APA requests.

(2) *Prospective Years, Rollback Years, and Filing Deadline of Complete APA Request.* An APA term will comprise prospective years and rollback years (if any). Except as provided in section 3.03(2)(b), a prospective year is a taxable year in an APA term (or a requested APA term) for which the taxpayer has filed a complete APA request, or an APA request that is considered complete (see section 3.03(3)), as of a date that is no later than the applicable return date (as defined in section 3.03(2)(a)) for that taxable year. Any APA year, or proposed APA year, ending before the first prospective year will be a rollback year (see generally section 5.02). Depending on the taxable years that the taxpayer proposes be covered by the APA term and depending upon the date that APMA considers the taxpayer's APA request to be complete, the first

prospective year of the APA may or may not be the same as what is proposed by the taxpayer. For example, the taxpayer may file its APA request intending that a certain taxable year be the first prospective year of the APA. If, however, APMA determines the APA request is not complete as of the applicable return date for that taxable year, then the taxable year the taxpayer intended to be the first prospective year will be considered to be a proposed rollback year. APMA will determine which proposed APA year will be the first prospective year according to the provisions of this section.

(a) *Applicable Return Date.* If the taxpayer timely files its U.S. return for a taxable year, the applicable return date for that year is the later of (i) the actual filing date, and (ii) the U.S. return's due date prescribed by statute without regard to extensions. If the taxpayer does not timely file its U.S. return for a taxable year, the applicable return date for that year is the U.S. return's due date prescribed by statute without regard to extensions.

(b) *Special Filing Deadline Rule for Bilateral and Multilateral APA Requests.* An additional filing deadline applies in the case of bilateral and multilateral APA requests. In order to better coordinate the timing of discussions on bilateral and multilateral APAs with foreign competent authorities, the taxpayer should file a complete bilateral or multilateral APA request (or be considered to have filed such a complete request under section 3.03(3)) no later than 60 days after a corresponding bilateral or multilateral request proposing to cover substantially the same coverable issue(s) and APA years has been filed with a foreign competent authority. For this purpose, the filing of a corresponding request with a foreign competent authority shall be understood to

mean the filing of a substantive request with that foreign competent authority rather than the mere filing of a notice of intent to file a substantive request. If the taxpayer does not meet the deadline for filing stated in this section 3.03(2)(b), then the first APA year that otherwise would be a prospective year under the rules of this section 3.03(2) will be considered to be a rollback year. If the taxpayer misses that deadline by more than one year, then the first two or more APA years (as determined by APMA in its discretion) that otherwise would be prospective years under the rules of this section 3.03(2) will be considered to be rollback years.

(3) Date as of Which APA Request Considered Complete.

(a) In general. In certain cases, a complete APA request will be considered to be filed on a date earlier than the date on which it is actually filed. Specifically, the curing of certain deficiencies in an APA request could relate back to the original filing date (see section 3.04(1)). The curing of an incorrect user fee could in exceptional cases relate back to the original date of payment (see section 3.05). The filing of an APA request will in certain cases relate back to the date on which the user fee was paid (see section 3.03(3)(b)). More than one of these provisions just cited could apply in combination to the same APA request. For example, a complete APA request could be considered to have been filed by a particular date if (i) the user fee is paid by that date, (ii) an APA request is filed within the 120-day period specified in section 3.03(3)(b), and (iii) that APA request is not complete when filed, but prompt supplementation to cure minor deficiencies as specified in section 3.04(1) renders the APA request complete. As stated in section 3.04(1), APMA's decision of whether, and when, an APA request is

complete or considered complete is not subject to administrative review.

(b) *“Dollar File” Requests.* For purposes of this section, APMA will consider a complete APA request as having been filed by a particular date if (i) the correct user fee is paid (within the meaning of section 7502(a) of the Code) by such date, and (ii) a complete APA request is filed within 120 days of such date. APMA may agree to extend such 120-day period by 30 days for good cause if the taxpayer requests such an extension before the 120-day period expires.

.04 Content and Form of Complete APA Requests.

(1) *In General.* The Appendix sets forth the required contents of an 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. APMA will consider an APA request to be complete if it (1) is accompanied by payment of the correct user fee as specified in section 3.05, (2) contains all the information required by the Appendix (subject to any exceptions agreed to by APMA), and (3) proposes covered methods that provide a reasonable basis on which to consider resolution of the proposed covered issues. For this purpose, a subsequent remedy of minor deficiencies, made promptly under the circumstances, will relate back to the time of original filing. In exceptional circumstances, APMA may also allow a subsequent remedy of substantial deficiencies, made promptly under the circumstances, to relate back to the time of original filing. (Regarding deficiencies in the payment of the user fee, see section 3.05(3).) APMA’s decision of whether, and when, a complete APA request is filed or considered filed is not subject to administrative review. Any questions

about filing an APA request not addressed in this section or in section 2 should be directed to APMA.

(2) *Abbreviated APA Requests.* The taxpayer must obtain prior permission from APMA to file an abbreviated APA request. An abbreviated APA request that the taxpayer files without such permission will not be considered a complete APA request under this section 3.04. An abbreviated APA request might be appropriate for expansion of a competent authority request under Rev. Proc. 2015-40 into APA years under the circumstances described in section 5.01(2), for APA renewals under the circumstances described in section 8, in certain circumstances for APA requests eligible for the small case user fee as specified in section 3.04 of the Appendix, and in other, exceptional circumstances. In evaluating the taxpayer's request to file an abbreviated APA request, APMA will consider that in most cases it can most efficiently process an APA request when the APA request itself contains all documents reasonably needed to evaluate that request, even if some of those documents have been submitted before to the IRS. Before requesting permission to file an abbreviated APA request, the taxpayer should consider whether the documents that it proposes to omit from the APA request could alternatively be provided as exhibits to that request.

(a) *Abbreviated APA Requests Not Eligible for Small Case APA User Fee.* To request permission to file an abbreviated APA request that is not eligible for the small case APA user fee as specified in section 3.04 of the Appendix, the taxpayer must file a pre-filing memorandum as described in sections 3.02(4) and 3.02(6)(d). After reviewing the pre-filing memorandum and (if applicable) holding a pre-filing conference (see

section 3.02(8)(a)), APMA will inform the taxpayer either that APMA will accept an abbreviated APA request (in which case APMA will instruct the taxpayer on the content of the request), or that APMA will require a complete APA request.

(b) *Abbreviated APA Requests Eligible for Small Case APA User Fee.* To request permission to file an abbreviated APA request that is eligible for the small case APA user fee, the taxpayer may contact APMA informally to discuss the proposed contents of the request. After discussion with the taxpayer and consideration of any written material submitted by the taxpayer, APMA will inform the taxpayer either that APMA will accept an abbreviated APA request (in which case APMA will instruct the taxpayer on the content of the request), or that APMA will require a complete APA request.

(3) Any information submitted by a taxpayer in connection with its APA request must be true, correct, and complete (see the Appendix). All exhibits and documents included in or referred to in the APA request must be explained, as necessary, 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 informally 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.

(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. In exceptional cases, APMA may allow the remedy of the insufficient user fee to relate back to the date that the insufficient user fee was paid for purposes of determining when a complete APA request is considered to be filed (see section 3.03(3)).

.06 APA Request as Protective Claim. For proposed covered issues, 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 11.02(3) of Rev. Proc. 2015-40. See section 11 of Rev. Proc. 2015-40 and the Appendix. For purposes of the annual notification requirement of section 11.05 of Rev. Proc. 2015-40, a protective claim included in a bilateral or multilateral APA request shall be deemed to be continuously filed for as long as the subject matter of that claim is under consideration by APMA as part of that APA request.

.07 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.

.08 *APA Term.* The APA term will comprise all of the prospective years and rollback years (if any) covered by the APA. 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, an APA request typically should propose at least five prospective years, unless the taxpayer states a compelling reason to include fewer years. Additionally, in the interest of principled, effective, and efficient tax administration, APMA typically will seek to set the APA term so there are at least three unexpired years (i.e., years that have not yet ended) remaining in the APA term upon the execution of the APA (in the case of a unilateral APA) or upon the execution of the underlying competent authority resolution (in the case of a bilateral or multilateral APA). APMA may require that the taxpayer agree to extend the APA term in order to achieve that goal. In the case of a bilateral or multilateral APA, any proposed term extension will be coordinated with the relevant foreign competent authority(ies).

.09 *Requested and Supplemental Items.*

(1) The information, documents, and materials required for APA requests that are identified in the Appendix might not exhaust the items an APA team needs to evaluate 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 (or, as the case may be, related foreign taxpayers) must respond similarly to requests made by a foreign competent authority, as applicable. The APA team will endeavor to present focused, targeted requests for additional information. To the extent possible, the APA team will request information that the taxpayer would be likely to maintain in its normal course of business or information that is readily accessible or could be produced without placing undue burdens on the taxpayer. In this regard, the APA team will discuss and consider reasons offered by the taxpayer to modify the request or to provide other, but still responsive, information to that which was requested.

(2) In general, the taxpayer should be prepared to provide both (or all) competent authorities with any written responses, analyses, or other documents that it provides to one competent authority, whether such materials 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 as necessary to find efficient procedures for disseminating such materials to the competent authorities, such as using indexes to catalogue the materials that have been provided to each competent authority.

.10 Corrected and Updated Information.

(1) After the APA request is filed, any material errors or material omissions in the APA request or in supplemental submissions must be promptly corrected or remedied.

(2) The taxpayer must timely notify APMA of all material changes and updates to information previously submitted in connection with the APA request. The taxpayer must also submit any information or documents discovered or created during the APA process that are material to the APA request.

(3) Any financial data that are produced in connection with the APA request during the APA process, and that relate to the application of the proposed covered methods to the proposed covered issues, 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 taxpayer's taxable year, or by a date that is mutually acceptable to the taxpayer and to APMA. APMA recognizes that additional time may be appropriate if the covered methods require data from foreign parties that have different taxable years than the taxpayer. 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.

.11 *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 APA team leader to whom the request has been assigned. In addition, the letter will: (1) state that the request is complete and that the APA process will proceed (and, if applicable, that the taxpayer must take certain administrative or procedural steps pertaining to the APA request), (2) state 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) state that the request is rejected and describe the circumstances, if any, under which the request might be accepted.

.02 *Denial or Discontinuation of the APA Process.*

(1) APMA may decline to enter into or continue with the APA process, either at the outset by rejecting the APA request or by terminating or suspending the APA process after it has accepted the APA request. APMA may take such actions if, for example, any of the circumstances described in, or similar to those described in, section 7.02 of Rev. Proc. 2015-40 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. APMA also will terminate the APA process for a requested unilateral APA if agreement cannot be reached on the APA's terms. For requested bilateral and multilateral APAs, APMA may terminate the APA process if a competent authority resolution is not reached; however, in some cases APMA and the taxpayer might then agree to execute a unilateral APA.

(2) If APMA declines to continue with the APA process after the process has

begun, APMA 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 to decline to initiate, or to suspend or terminate, the APA process is not subject to administrative review.

.03 Initial Stages of APA Process.

(1) The APA team leader will contact the taxpayer once APMA has determined that the APA request is complete and that the APA process should continue. In most cases, the next step in the APA process is to hold an opening conference. However, depending on its experience and familiarity with the proposed covered issue(s) and method(s) and other aspects of the APA request, the APA team may determine that an opening conference is not needed. Generally, the APA team will forego an opening conference only if it has no substantial disagreement with what the APA request proposes. If the APA team decides to hold an opening conference, the APA team leader will work with the taxpayer to set a date for the conference. The APA team may request that the taxpayer provide responses to specific questions from the APA team about the APA request before the opening conference or at the opening conference. The APA team leader may set or agree to a due date before the opening conference for such responses and may postpone the opening conference if the responses are not provided by that date.

(2) An opening conference is intended to facilitate the APA team's understanding of the facts and circumstances underlying the taxpayer's proposed covered issue(s),

covered method(s), and terms and conditions. The opening conference may also involve a discussion of the taxpayer's reasons for its selection of its proposed covered method(s). The APA team may also explore matters potentially interrelated with the proposed covered issues and discuss the possibility of including additional coverable issues, treaty countries, or years in the APA (see section 2.02(4)). At the opening conference, the taxpayer should be prepared to discuss the APA request in detail and to respond as fully as possible to questions about the facts and the proposals. In many cases, the discussion will focus on the taxpayer's responses to the APA team's questions provided in advance of the opening conference (see section 4.03(1)).

(3) The opening conference may also cover procedural matters, including whether a case plan will facilitate the APA team's evaluation of the taxpayer's APA request, and, if so, at what point in the APA process it may be useful for the APA team to adopt a case plan. Ordinarily, a case plan will be adopted to facilitate efficient processing of the taxpayer's APA request. With or without a case plan, the APA team will endeavor to move through the APA process efficiently, given the scope and complexity of the proposed APA and the due diligence and analysis the APA team needs to undertake. In preparing a case plan, the APA team and the taxpayer will discuss milestones, which will depend on the nature of the covered issue(s), the quality of the APA request and any responses already provided by the taxpayer, and the further due diligence and analysis required. The time estimates for these milestones as reflected in a case plan are subject to revision. The time required to achieve milestones can be affected by various factors including (a) the quality and timeliness of information provided by the

taxpayer, (b) the need to consider interrelated matters (see section 2.04(4)), (c) the emergence of unanticipated issues (for example, because of a change in the facts), (d) in the case of bilateral or multilateral APA requests, when the foreign competent authority(ies) are prepared to discuss the case, and (e) the ease with which an agreement can be reached with the taxpayer for unilateral APA requests or with the foreign competent authority(ies) for bilateral and multilateral APA requests.

.04 Evaluation and Presentation Stage of APA Process for Bilateral and Multilateral APA Requests.

(1) In evaluating a bilateral or multilateral APA request, the APA team will consider requests from, and may invite or require, the taxpayer to make presentations jointly to the APA team and to the foreign competent authority(ies). The provision of such information simultaneously to all competent authorities could facilitate efficient case processing. The APA team will consult as needed with the foreign competent authority(ies) as to its interest in joint presentations, and will notify the taxpayer accordingly.

(2) During the APA process, the APA team may also request teleconferences or in-person meetings with the taxpayer to discuss questions or concerns the APA team may have about the taxpayer's APA request, or to discuss the APA team's provisional views on the request or aspects of the request. The APA team may also invite the taxpayer to provide written responses to memoranda discussing such issues. For example, the APA team may invite the taxpayer to respond to questions or concerns the APA team has about the discount rate the taxpayer has chosen for a discounted cash flow analysis

and to provide its comments regarding a different discount rate that the APA team considers a viable alternative. Depending on the case, the APA team may simultaneously provide such invitation to the taxpayer and a copy to the foreign competent authority(ies) and invite the taxpayer to direct its responses to both the foreign competent authority(ies) and the APA team.

(3) The APA team may reach a point in the APA process when it prepares to formally present its view on the APA request to the foreign competent authority(ies). At this point, the APA team will convey the substance of its views to the taxpayer, generally in a paper or memorandum having a length, content, and format appropriate to the scope and duration of the APA process and to the size and complexity of the proposed covered issue(s) and method(s) and other relevant facts and circumstances surrounding the case. In some cases, the APA team may present the paper or memorandum to the taxpayer for its comment before the APA team formally presents its views to the foreign competent authority(ies). In other cases, the APA team may issue the paper or memorandum simultaneously to the taxpayer and to the foreign competent authority(ies). The taxpayer would then be invited to provide its comments to both the APA team and the foreign competent authority(ies) for their discussion and consideration towards reaching a competent authority resolution. The decision as to which approach is taken is within the discretion of the APA team.

(4) The APA team will then endeavor with the foreign competent authority(ies) to reach a competent authority resolution that will underlie the APA that will be executed between the taxpayer and the IRS. The mutual agreement procedure article in

arbitration treaties requires that the competent authorities refer certain cases to mandatory arbitration in the event direct discussion between the competent authorities 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 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 10 of Rev. Proc. 2015-40.

.05 Evaluation and Presentation Stage of APA Process for Unilateral APA

Requests. Many of the steps involved in the evaluation and presentation stage of the APA process as applied to unilateral APA requests are similar to those relating to bilateral and multilateral APA requests. For example, at various points the APA team may invite the taxpayer to respond, either orally or in writing, as appropriate, to its questions or concerns about, or provisional views on, the APA request. The primary difference is that, in the case of a unilateral APA request, the APA team and the taxpayer will proceed directly to finalize an APA after the APA team has completed its due diligence and evaluation of the APA request and the APA team and the taxpayer have agreed to the APA's covered issue(s), covered method(s), and terms and conditions.

.06 Execution of Agreement. With regard to either a unilateral APA or a bilateral or multilateral APA, the agreement will become effective on the date when it has been executed by both the IRS and each entity included within the definition of the taxpayer in section 1.04, and the APA then will have effect as provided therein. When an APA's

covered group includes a member of a consolidated group other than the common parent (as defined in Treas. Reg. §1.1502-1), the common parent must sign the APA as provided in Treas. Reg. §1.1502-77. The person who signs an APA for a corporation must be an authorized officer of that corporation, 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 that corporation's income tax return pursuant to section 6062 of the Code. An APA for a non-corporate taxpayer must be signed by an individual who has personal knowledge of the APA's covered issue(s), covered method(s), and terms and conditions, and who is authorized to sign that taxpayer's income tax return pursuant to section 6061 or 6063 of the Code, as applicable. In the case of a partnership, APMA may additionally require that some or all partners sign the APA. Any questions about the required signatory or signatories of an APA should be directed to the APA team leader.

.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. COORDINATION WITH REV. PROC. 2015-40 AND ROLLBACKS

.01 Extension of a Competent Authority Resolution under Rev. Proc. 2015-40 to an APA.

(1) Under Rev. Proc. 2015-40, APMA may propose that a taxpayer pursue ACAP to extend a competent authority resolution in its competent authority case to one or

more ACAP years. APMA may also discuss with the taxpayer the possibility of extending the competent authority resolution forward into an APA.

(2) A request to extend a competent authority resolution under Rev. Proc. 2015-40 forward into an APA may be made either by filing a complete APA request, or by filing an abbreviated APA request with APMA's permission pursuant to section 3.04(2). An abbreviated APA request might be appropriate provided that the taxpayer establishes that the applicable law, facts and circumstances, economic conditions, proposed covered issue(s) and method(s), and other relevant factors surrounding the taxpayer's proposed APA years are reasonably expected to be substantially the same as such factors surrounding the years in its competent authority case under Rev. Proc. 2015-40.

.02 Rollbacks.

(1) An APA is primarily a means to resolve coverable issues for prospective years. However, an APA may apply the covered methods (with appropriate modifications, if necessary) to one or more earlier, rollback years. (See generally, section 3.03.) Typically the taxpayer requests a rollback, but APMA may also consider a rollback even in the absence of a taxpayer's request.

(2) A rollback request generally should be included in the taxpayer's APA request (see the Appendix). APMA may, in its discretion, consider a later written request for a rollback.

(3) Whether included in the APA request or in a subsequent written request, the rollback request must include the same kind of information regarding the proposed rollback years that is required to be submitted regarding the proposed prospective

years.

(4) After coordinating and collaborating with other offices within the IRS, APMA will inform the taxpayer whether its rollback request has been accepted for consideration. Except in unusual circumstances, APMA will not agree to cover a closed filed year with a rollback of a unilateral APA request. For a rollback that is requested in conjunction with a bilateral or multilateral APA request, APMA will (i) agree to cover an open filed year only if it would agree to accept a competent authority or ACAP request covering such year (see section 7.02 of Rev. Proc. 2015-40), and (ii) agree to cover a closed filed year only if it would agree to accept a competent authority or ACAP request covering such year and only if the applicable U.S. tax treaty(ies) allows the corresponding competent authority resolution to be implemented in that filed year.

(5) Regardless of whether the taxpayer pursues a rollback request, APMA reserves the right to coordinate with applicable IRS offices to pursue a rollback to any or all of the taxpayer's open back years. In general, APMA will consider taking such action where there is sufficient similarity in relevant facts and circumstances across the proposed prospective years and the taxpayer's open back 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 a rollback and the back years it will seek to cover. If the taxpayer refuses to accept a rollback, and after considering the taxpayer's reasons for the refusal, APMA may decline to initiate the APA process or may suspend or terminate the process if it has already begun (see section 2.02(4)(a)). Even if APMA does not require a rollback, APMA might still condition its agreement to an APA on the APA's

terms being consistent with the tax treatment of issues in what might otherwise have been one or more rollback years (see section 2.02(4)(a)).

(6) A rollback request submitted in connection with a bilateral or multilateral APA request is subject to the provisions regarding coordination with IRS Appeals set forth in section 6.04 of Rev. Proc. 2015-40, and is subject to the requirement that the taxpayer submit a waiver of ex parte communication (see Appendix, section 1.03, Exhibit 4).

(7) A taxpayer's rollback request submitted in connection with a bilateral or multilateral APA request and involving a taxable period and issue that are either designated for litigation, in litigation, or the subject of a judicial determination or litigation settlement, or involving a taxable period for which the taxpayer otherwise is in litigation concerning its federal tax liability will be governed by the provisions regarding coordination set forth in section 6.05 of Rev. Proc. 2015-40.

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. tax treaties.

.03 Scope of Agreement. Except as otherwise provided in this section, an APA will have no legal effect except with respect to the taxpayer, taxable years, and issues to

which the APA specifically relates. If a covered issue is the transfer of intangible property (which does not constitute a platform contribution transaction as defined in Treas. Reg. §1.482-7(b)(1)(ii)) within the meaning of Treas. Reg. §1.482-4, the APA may provide that such transfer will not be subject to periodic adjustments, during or after the APA term, under Treas. Reg. §1.482-4(f)(2) or (6). If a covered issue is a platform contribution transaction, the APA may provide that such transaction will not be treated as a Trigger PCT within the meaning of Treas. Reg. §1.482-7(i)(6)(i) for purposes of making periodic adjustments, during or after the APA term, under Treas. Reg. §1.482-7(i)(6).

.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's 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 Reporting of Income, APA Primary Adjustments, Conforming Adjustments, and Repatriation of Funds.

(1) *Reporting of income and APA primary adjustments.* The taxpayer's reporting of income, deductions, credits, allowances, basis, or any other item or element affecting taxable income during the APA term must clearly reflect the application of the covered method(s) to the covered issue(s). In some cases, such reporting for an APA year will require an adjustment to the amounts shown in the taxpayer's books and records for that APA year and/or to the amounts reflected on a U.S. return (APA primary adjustment). An APA primary adjustment for an APA year must be reported (a) on a timely-filed U.S. return for such APA year, (b) on an amended U.S. return for such APA year that is filed within 120 days of the APA's effective date, or (c) by an alternative means that is specified in the APA. Manners (b) and (c) in the previous sentence are permitted only if the original U.S. return for such APA year is timely filed no later than 60 days after the APA's effective date. For an APA year for which the taxpayer reports an adjustment under manner (b) or (c), the computation of any required estimated tax installments for the taxable year will not take into account the APA primary adjustment and any related adjustments (see section 7.01(2)). Further, for such an APA year, the taxpayer will not be subject to the failure to pay penalties under sections 6651 and 6655

of the Code, or the failure to make timely deposit of taxes penalty under section 6656 of the Code, by reason of the APA primary adjustment and any related adjustments.

(2) *Conforming adjustments and repatriation of funds.* This section 7.01(2) applies only to APA primary adjustments that arise from applying a covered method that addresses the allocation of income, deductions, credits, allowances, basis, or any other item or element affecting taxable income between members of a controlled group. (Such allocation generally would be governed for U.S. tax purposes by section 482 or 367(d) of the Code, as modified by any applicable treaty provision.) Thus, this section 7.01(2) would not apply, for example, to APA primary adjustments attributable to a U.S. permanent establishment of a foreign corporation.

(a) *Need for conforming adjustments; payment of funds.* For an APA primary adjustment, a further adjustment is needed to conform the accounts of the affected members of the controlled group (conforming adjustment). In some cases the conforming adjustment can be accomplished by a payment of funds between the affected members; such payment is referred to as a repatriation of funds when the affected members are in different countries.

(b) *Application of Rev. Proc. 99-32.* Rev. Proc. 99-32, 1999-2 C.B. 296, or successor guidance, will govern the repatriation of funds to conform the accounts following an APA primary adjustment, unless the competent authority repatriation specified in section 7.01(2)(c) applies to that APA primary adjustment.

(c) *Competent authority repatriation.* For bilateral and multilateral APAs, APMA will apply the rules and principles set forth in section 4.02 of Rev. Proc. 2015-40

governing competent authority repatriation to determine the terms of any repatriation of funds to conform the accounts following an APA primary adjustment, if competent authority repatriation is agreed to as part of the competent authority resolution underlying the APA. APMA will not include competent authority repatriation as part of the competent authority resolution unless the following two conditions are satisfied: (i) no person (whether or not a “United States taxpayer” within the meaning of Rev. Proc. 99-32 or successor guidance) 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 or successor guidance, and (ii) the taxpayer explicitly requests competent authority repatriation in its APA request, or in a supplemental written submission filed with APMA prior to a tentative competent authority resolution being reached.

(d) *Implementation in APA.* Whether unilateral, bilateral, or multilateral, the APA will specify the terms of conforming adjustments, including, but not limited to, the terms of any repatriation of funds.

(e) *Documentation in annual reports.* The taxpayer must document how the conforming adjustment for any APA primary adjustment is made, including the relevant amounts, timing, and manner of all payments and deemed payments, and must disclose these facts in the APA annual report for the APA year to which the APA primary adjustment relates (see section 7.02).

.02 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 should disclose any pending 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 annual reports on or 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. 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 must file one original annual report containing a signed original of the "penalties of perjury" declaration, one printed copy of the contents of the original annual report, and one electronic copy of the contents of the original annual report. The taxpayer must file all three copies of the annual report with APMA at the address set forth in the Appendix. The electronic copy of the annual report must follow the rules for media and format of electronic submissions described in the Appendix. Upon request, the taxpayer must file additional printed copies.

(4) 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.

(5) Any request that 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.

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

(7) 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.

(8) 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.]

(9) The taxpayer must sign the declaration(s) according to the instructions in the Appendix regarding perjury statements.

(10) Failure to file an annual report that is timely, complete, and accurate may be grounds for canceling or revoking the APA under section 7.06.

.03 Examination.

(1) With respect to the covered issue(s), 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 APA's covered method(s) 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), and must then make any resulting APA primary adjustments.

.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 of the covered issue(s), 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, 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 is willing to agree to a revision proposed by the taxpayer to a bilateral or multilateral APA, it will seek the consent of the applicable foreign competent authority(ies) with respect to the revision. If the U.S. and foreign competent authority(ies) agree to such revision, or agree to another revision acceptable to the taxpayer, then APMA will agree with the taxpayer to revise the APA. If the U.S. and foreign competent authority(ies) cannot so agree, the APA remains in force without revision. However, in some cases APMA and the taxpayer may then agree, for U.S. domestic purposes, to (i) revise the APA with respect to one or more APA years, or (ii) 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 those terms are used in section 7121 of the Code), or disregard (as that term is used 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 or successor guidance, (c) allow the taxpayer relief under Rev. Proc. 99-32 or successor guidance, but determine the

interest on any account receivable established under section 4.01 of Rev. Proc. 99-32 or successor guidance 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. 2015-40. APMA will seek to coordinate these or any other actions concerning the 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 taxable 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. 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. 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 controlling 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 with APMA's permission pursuant to section 3.04(2). An abbreviated APA request might be appropriate if the taxpayer can establish to APMA's satisfaction that the applicable law, facts and circumstances, economic conditions, proposed covered issue(s) and method(s), and other relevant factors surrounding the current APA are reasonably expected to be substantially the same as those in the proposed renewal APA years.

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

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, any background information relating to an APA, an APA request, and any 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. 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 principled, effective, and efficient tax administration and the practices of the relevant foreign competent authority(ies), including where relevant the existence and application by the foreign competent authority(ies) of rules similar to those described in sections 6.04 and 6.05.

SECTION 10. EFFECT ON OTHER DOCUMENTS

Rev. Procs. 2006-9, 2006-1 C.B. 278, and 2008-31, 2008-1C.B. 1133, are modified and superseded by this revenue procedure. Rev. Proc. 2015-40, I.R.B. 2015-35, is amplified.

SECTION 11. EFFECTIVE DATE AND TRANSITION RULE

.01 General. This revenue procedure will apply to all APA requests filed under this revenue procedure. An APA request filed after August 31, 2015 may instead be filed under Rev. Proc. 2006-9 only if a substantially complete APA request is filed under that revenue procedure no later than December 29, 2015. For purposes of this section, the 120-day allowance in section 4.07(2) of Rev. Proc. 2006-9 shall not apply in determining

the date on which a substantially complete APA request is considered filed under Rev. Proc. 2006-9. APA requests filed on or before December 29, 2015 should clearly state under which revenue procedure they are filed.

.02 Rollbacks. Rev. Proc. 2006-9 is retroactively amended so that rollbacks (within the meaning of section 8 of Rev. Proc. 2006-9) may be implemented and given legal effect in an APA (within the meaning of Rev. Proc. 2006-9 as modified by Rev. Proc. 2008-31, 2008-1 C.B. 1133). This retroactive amendment applies to any APA governed by Rev. Proc. 2006-9 that includes such a rollback.

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, 3.06, 3.09, 3.10, 4.04, 4.05, 5.01, 5.02, 7.02, 7.04 and 8.01 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 memorandum (and, if applicable, 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 (and, if applicable, attend a pre-filing conference).

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.

SECTION 13. DRAFTING INFORMATION

The principal authors of this document are John Hughes and Robert Weissler 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 Mr. Hughes at (202) 515-4307 or Ms. Holland at (202) 317-6939 (not toll free numbers).

APPENDIX APA REQUEST REQUIREMENTS

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 3.04(2) of the 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.

An APA request that is not an abbreviated APA request will provide the information specified below. An APA request, whether or not abbreviated, should also include any additional material that the taxpayer believes is important to facilitate the APA team's evaluation of the request. The level of detail required in the APA request 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), 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 COMPLETE APA REQUESTS

.01 *General.* An APA request must include a request letter followed by the exhibits presented in the order as listed in this section. This section contains cross-references to parts of the request letter (e.g., part 2.1) and to particular exhibits (e.g., Exhibit 3). The required exhibits may be followed by any other exhibits the taxpayer believes are necessary or useful to facilitate APMA's review of its APA request. An original of the request 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 request 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 successor guidance). The request letter and the exhibits must contain or respond to the required statements, descriptions, explanations, and other requested information. If the taxpayer believes a required item is not applicable to its APA request, this must be shown as "N/A" or "Not Applicable" (as opposed to being left blank). If the taxpayer maintains that it is unable to provide the required item or seeks an exception to the filing requirement, it must provide a statement of its reasons for not providing the item or its basis for the exception it seeks (as opposed to leaving the entry blank). APMA may permit exceptions to the filing requirements in this Appendix on a case-by-case basis.

.02 *Request Letter.* The request letter must be presented according to the instructions and structure set forth below, and must include a table of contents giving the page on which each part and subpart begins.

Part 1. Executive Summary

1.1	<p><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</p>
1.2	<p><u>Summary of APA request:</u> Provide an executive summary of the content of the APA request that addresses the following:</p> <ul style="list-style-type: none">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;b. Whether the APA request proposes a renewal of an existing APA or the extension of a competent authority resolution from competent authority or ACAP years into APA years;c. The proposed prospective years and the proposed rollback years;d. The proposed covered issue(s) and an estimated dollar value of such issue(s) in the proposed APA years; ande. The proposed covered method(s), including, as applicable, the proposed tested party(ies), profit level indicator(s), and interquartile range(s)

Part 2. Administrative Information

2.1	<p><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</p>
2.2	<p><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</p>

2.3	<p><u>Filed Years:</u> Provide a table with the following information for each member of the proposed covered group:</p> <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. The expiration dates of statutes of limitations for all open filed years in the United States and in the relevant treaty country(ies) c. 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); and d. 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
2.4	<p><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 specified taxable years, pursuant to section 5.02(6) of the revenue procedure</p>
2.5	<p><u>Optional e-mail memorandum of understanding:</u> At the taxpayer's option, an executed memorandum of understanding in the form prescribed by APMA (as may be posted on the APMA website or otherwise available by contacting APMA) permitting APMA to communicate with the taxpayer's authorized representatives through encrypted e-mail</p>

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>Rollback:</u> Provide the following information:</p> <ul style="list-style-type: none"> a. If the taxpayer is seeking consideration of a rollback, list the

	<p>proposed rollback years; and</p> <p>b. If the taxpayer is not seeking consideration of a rollback, discuss the reasons as to why a rollback is not appropriate</p>
3.3	<p><u>Background on proposed covered group:</u> Provide background on the following points, with reference to the covered issue diagrams:</p> <p>a. The general history of the business operations of the proposed covered group and of the controlled group;</p> <p>b. The worldwide gross revenue of the controlled group in the most recent taxable year available;</p> <p>c. The functional currency of each member of the proposed covered group;</p> <p>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</p> <p>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</p>
3.4	<p><u>Narrative with reference to proposed covered issues in covered issue diagrams:</u> For each proposed covered issue, provide a detailed discussion of the following, with reference to the covered issue diagrams in Exhibit 11:</p> <p>a. The functions performed by each member of the proposed covered group in relation to the proposed covered issue;</p> <p>b. The assets employed by each member of the proposed covered group in relation to the proposed covered issue;</p> <p>c. The risks assumed by each member of the proposed covered group in relation to the proposed covered issue;</p> <p>d. Transactional or commercial flows relating to the proposed covered issue(s) 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</p>

	<p>the proposed covered group and members or business units 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 relating to the proposed covered issue(s); 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>Narrative with reference to non-proposed covered issues in covered issue diagrams:</u> For each issue that is not a proposed covered issue, but is an issue that APMA might reasonably consider in analyzing the proposed covered issues under the principles expressed in section 2.02(4)(a), a discussion of why in the interest of principled, effective, and efficient tax administration such issue need not be a covered issue, and of the extent to which such issue should be considered in the APA process</p>
3.6	<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 similar to the proposed covered issue(s);</p> <p>b. The terms of any competent authority resolution addressing intercompany transactions or business activities of members of the proposed covered group that are similar to 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 similar to the proposed covered issue(s)</p>
3.7	<p><u>Ancillary issues:</u> List the ancillary issues (if any) proposed to be</p>

	covered by the APA
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Part 4. Proposed Covered Method(s)

4.1	<u>Selection and application 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, and how overall that method is applied, including the definition of the tested party(ies)
4.2	<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 or other market data upon which the 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 or other market data, the order in which different criteria were applied, the precise specification of each criterion (including for example the precise way in which multiyear averages are used, or in which requirements are applied across multiple years), and the numbers of potential comparable agreements or companies or other market data accepted and rejected at the different stages of the search and screening process
4.3	<u>Application of proposed covered method(s):</u> Provide a detailed explanation of (a) the data and assumptions used and (b) any adjustments made to the selected proposed comparable agreements or results of independent companies or other market data, or to the results of the tested party, such as adjustments relating to: (i) product line segregations, (ii) differences in accounting practices, (iii) differences in functions performed, assets employed, or risks assumed (especially noting working capital or other balance sheet adjustments made to the tested party(ies) or to the comparables and any differences between such adjustments and the adjustments incorporated into the APA template (as may be posted on the APMA website or otherwise available by contacting APMA), (iv) volume or scale differences, or (v) 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) all proposed rollback years, (ii) the most recent three back years, if they are not proposed rollback years (or as many such back years as have data available, if not all have data available), (iii) the first proposed APA year, using actual data if available and otherwise using forecasted data, and (iv) other proposed APA years, using forecasted data, to the extent forecasts are available
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 18), 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 (<u>see</u> Exhibit 15), noting, in particular, any proposed APA terms and conditions that differ from the APA terms and conditions as reflected in the model APA (<u>see</u> Exhibit 15)
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.03 *Exhibits*. The APA request must also include the following exhibits after the request letter, separated and ordered as indicated. Additional exhibits may be provided as needed. The taxpayer should be prepared to translate, upon request, material in exhibits that is presented in a foreign language. 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). The description of Exhibit 7, the “penalties of perjury” declaration, is written so as to accommodate such a declaration accompanying both an APA request and a supplemental submission.

Exhibit 1	<u>Contents of exhibits:</u> Provide a table or similar comprehensive list of the exhibits submitted, indicating the form (printed, electronic, or both) in which they are submitted
Exhibit 2	<u>Authorization form:</u> Include a properly executed Form 2848 (Power of Attorney and Declaration of Representative) for all individuals authorized to represent the taxpayer in connection with the APA request or Form 8821 (Tax Information Authorization) for all individuals authorized to inspect or receive confidential tax information about the taxpayer in connection with the APA request
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 11 of Rev. Proc. 2015-40 and, if so, include the information required by section 11.02(3) of Rev. Proc. 2015-40
Exhibit 4	<p><u>Waiver of ex parte communication:</u> If the APA request involves proposed rollback 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

	<p>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</p>
Exhibit 6	<p><u>Consents regarding period of limitations:</u> Any executed consents to extend the period of limitations for assessment of tax that are required under section 2.03(3)(a) of the revenue procedure</p>
Exhibit 7	<p><u>“Penalties of perjury” declaration:</u> Include the following “penalties of perjury” declaration:</p> <p style="padding-left: 40px;">Under penalties of perjury, I declare that I have examined this [APA request] [supplemental submission relating to an 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 8	<p><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)</p>
Exhibit 9	<p><u>Documents submitted to foreign competent authorities:</u> List all documents or written submissions provided to a foreign tax</p>

	<p>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 documents or written submissions for which English translations are available and any documents or written submissions provided 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</p>
Exhibit 10	<p><u>Pre-filing Submissions</u>: Include any pre-filing memoranda or other materials submitted in connection with the APA request</p>
Exhibit 11	<p><u>Covered issue diagrams</u>: Include diagrams, charts, or similar representations depicting the following information as it relates to the proposed covered issues and any interrelated matters that APMA might reasonably consider in analyzing the proposed covered issues under the principles expressed in section 2.02(4)(a), each presented in a manner similar to and with a degree of detail no less than that 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):</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, narrative, 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

	<p>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; and</p> <p>e. Organization or management 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) (<u>e.g.</u>, 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</p>
Exhibit 12	<p><u>APAs</u>: Include a copy of the most recent APA, if any, that the taxpayer or another member of the proposed covered group has entered into with (i) the IRS, and (ii) each involved foreign tax authority, concerning transactions or other business activities within the scope of the proposed covered issue(s)</p>
Exhibit 13	<p><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 or other market data, including a table or matrix showing the reason(s) for rejecting agreements or independent companies or other market data (<u>see</u> part 4.2)</p>
Exhibit 14	<p><u>Information on selected comparables</u>: As applicable, include a detailed discussion of 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), include (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</p>

	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</u> parts 4.3 and 4.4)
Exhibit 15	<u>Proposed draft APA</u> : Provide a proposed draft APA in a form substantially similar to APMA's current model APA (as may be posted on the APMA website or otherwise available by contacting APMA), together with a "redline" version of the same showing the differences between the model APA and the proposed draft APA
Exhibit 16	<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, using the APA template (as may be posted on the APMA website or otherwise available by contacting APMA)
Exhibit 17	<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 18	<u>Financial statements</u> : Provide copies of financial statements, including full income statements, balance sheets, and cash flow statements (audited, if available, and in English, if available), for

	each relevant member of the proposed covered group for each of the most recent three back years and specify the accounting standard used (<u>e.g.</u> , U.S. GAAP)
Exhibit 19	<u>Section 6662 documentation</u> : Include a copy of the documentation prepared in consideration of section 6662(e) of the Code (and, if applicable, a copy of similar documentation filed with or subject to request by the relevant foreign tax authority(ies)) 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 back years
Exhibit 20	<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 back years
Exhibit 21	<u>APA annual reports</u> : For renewal APA requests, provide all APA annual reports filed with APMA with respect to the current APA
Exhibit 22	<u>Intercompany agreements</u> : Include copies of any written 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), with a statement of when each contract or agreement was actually executed, and a summary of any oral intercompany agreements that are material to the proposed covered issues. For proposed APAs relating to intangible development arrangements, these agreements or contracts would include, as applicable, documents forming or revising the intangible development arrangement and documents relating to use under the intangible development arrangement of rights, resources, and capabilities owned by participants or related non-participants.

SECTION 2. MANNER AND MEDIA OF APA REQUEST FILINGS

.01 *General*. The taxpayer must provide copies of its APA request as follows: one (1) original, bound printed submission containing signed originals of the request 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), as applicable, original signed consents to extend the period of limitations for assessment of tax that are required under section 3.03(3) of the revenue procedure, placed in a separate, clearly labeled envelope, two (2) bound photocopies of the contents of the original printed submission, and three (3) electronic copies 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 of these originals and copies of the APA request must be filed with APMA at the address set forth in section 4 of this Appendix. Upon request, the taxpayer must provide additional electronic copies and/or bound photocopies of the contents of the original printed submission.

.02 Contents and Format of Printed Submissions. Each printed copy of the APA request must contain (i) the request letter, and (ii) Exhibits 1 through 15. The exhibits must be tabbed 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. The original signed consents to extend the period of limitations for assessment of tax should be individually stapled as needed, with all such consents bound together with a binder clip.

.03 Contents and Format of Electronic Copies.

(1) The electronic copies of the APA request must contain (i) the request letter, and (ii) Exhibits 1 through 22 and any additional exhibits. The exhibits should consist of separate electronic files named in a manner that corresponds to the exhibit numbers

and descriptive captions 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 copies of the APA request must include the request letter in both Microsoft Word (“Word”) and in Adobe Portable Document (“.pdf”) formats. Exhibit 15 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 internal cell references intact.

(5) For some APA requests (especially complex APA requests), the taxpayer may choose to additionally provide a bookmarked .pdf file that includes the entire contents of the APA request. In some cases, APMA may require that the taxpayer provide such a file.

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 APMA website. 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 APA request submitted by each controlled group. For this purpose, a multilateral request is considered to be a set of bilateral requests for each country involved.

.03 *Amounts.*

(1) *In general.* The user fee amounts are as follows:

- (a) \$60,000 for each APA request, except as otherwise specified in this section;
- (b) \$35,000 for each request to renew an APA that does not propose a substantial expansion of the APA's scope or a substantial change in the covered method(s) (other than updating of the results under the covered method(s)), provided that the pertinent facts remain substantially the same, unless such renewal is eligible for the small case APA user fee;
- (c) \$30,000 for each APA request eligible for the small case APA user fee; and
- (d) \$12,500 for each amendment to a current unilateral, bilateral, or multilateral APA.

(2) *Multiple requests.* If multiple APA requests are filed by the same controlled group within a sixty-day period, the maximum total fee charged will be \$60,000, plus \$30,000 for each foreign competent authority involved (if any) beyond the first two.

.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 back 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, material changes to a proposed covered method, and any other material additions or changes to the terms and conditions of the APA. 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

Deputy Commissioner (International)
Large Business and International Division
Internal Revenue Service
1111 Constitution Avenue, N.W.
SE:LB:IN:TPO:APMA:M3-370
Washington, D.C. 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. Contact information for APMA and additional information is as follows.

Telephone	Telephone numbers are available through the “contact us” link on the APMA website
Website	www.irs.gov/Businesses/Corporations/APMA

Headquarters 801 Ninth Street, N.W.
Physical Washington, D. C. 20001
Location (Mail not accepted at this location)