

NO.: **94-4R**

DATE: March 16, 2001

SUBJECT: **International Transfer Pricing: Advance Pricing Arrangements (APAs)**

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*This circular cancels and replaces Information Circular 94-4, dated December 30, 1994.*

*This Information Circular provides comprehensive guidance on Advance Pricing Arrangements (APAs). Any taxpayer subject to transfer pricing rules in section 247 of the Canadian Income Tax Act may request an APA.*

*The Information Circular has been revised to reflect improvements the Canada Customs and Revenue Agency (CCRA) is making in program administration as a result of an extensive consultation process involving affected taxpayers, tax executives, and tax specialists.*

## **Contents**

<i>Introduction</i>	(1-6)
<i>Glossary of Terms and Abbreviations</i>	(7)
<i>Part I – Purpose and Scope of APAs</i>	(8-16)
<i>Part II – Prefiling Meeting(s)</i>	(17-20)
<i>Part III – Processing an APA Request</i>	(21-30)
Accepting an APA request	(21-22)
Declining an APA request	(23-24)
Withdrawing an APA request	(25-26)
User charges	(27-28)
Case assignment	(29-30)
<i>Part IV – Content of an APA Submission</i>	(31-57)
General	(31-40)
Items for inclusion in an APA submission	(41-42)
Explanation of a proposed TPM	(43-47)
Independent experts	(48-52)
Critical assumptions	(53-54)
Term of an APA	(55)
Declaration statement	(56-57)
<i>Part V – Case Work and Resolution</i>	(58-68)
Review, analysis, and evaluation	(58-64)
Negotiations and agreements	(65-67)
Post-settlement	(68)
<i>Part VI – Competent Authority Consideration</i>	(69-72)
<i>Part VII – Legal Effect</i>	(73-74)
<i>Part VIII – Use, Disclosure, and Protection of Information</i>	(75-77)
<i>Part IX – Administering an APA</i>	(78-108)
APA reporting	(78-82)
Compensating adjustments	(83-88)
Auditing an APA	(89-90)
Resolving disputes	(91-92)
Revising an APA	(93-96)

Cancelling an APA	(97-99)
Revoking an APA	(100-102)
Renewing an APA	(103-108)
<i>Part X – Other Reference</i>	(109-110)
<i>Part XI – Further Contact</i>	(111)
<i>Appendix I – Prefiling Meeting(s)</i>	
<i>Appendix II – Example of a BAPA Request Letter</i>	
<i>Appendix III – Example of a BAPA Acceptance Letter</i>	
<i>Appendix IV – APA Submission Checklist</i>	
<i>Appendix V – Example of a BAPA Case Plan</i>	
<i>Appendix VI – Example of an APA (Tangible Property)</i>	

## **Introduction**

1. The Canada Customs and Revenue Agency (CCRA) has an Advance Pricing Arrangement (APA) program to help taxpayers determine appropriate transfer pricing methodologies (TPMs) for transactions or arrangements they participate in with non-resident persons with whom they do not deal at arm's length. The Competent Authority Services Division of the International Tax Directorate (ITD) at Headquarters administers the APA program.

2. In July 1995, the Organisation for Economic Co-operation and Development (OECD) issued the first part of its revised *Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations* (the OECD Guidelines). Chapter IV of the OECD Guidelines, "Administrative Approaches to Avoiding and Resolving Transfer Pricing Disputes," discusses APAs, among other things. In October 1999, the OECD released, as an appendix, supplementary guidelines for APAs, called "Guidelines for Conducting Advance Pricing Arrangements under the Mutual Agreement Procedure."

3. Information Circular 87-2, entitled *International Transfer Pricing*, sets out CCRA's views on transfer pricing and provides guidance with respect to the application of the transfer pricing rules in section 247 of the *Income Tax Act* (the Act). The purpose of Information Circular 94-4 is to explain how to apply for and obtain an APA for Canadian income tax purposes and gives guidelines on related topics.

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4. Any taxpayer may apply for APA consideration, regardless of the size of the organization, the type or scope of its operations, or the nature of the transactions and proposed TPMs.

5. The scope and complexity of a case, and not the size of a company, as well as other factors (such as the extent of co-operation and quality of information) will determine the time needed to process an APA request. The APA process is flexible enough to adapt to the facts and circumstances of any particular case.

6. There is no legal requirement to enter into APAs. The CCRA provides them as an administrative service. The CCRA considers all requests for APAs that are in accordance with paragraph 11. APAs benefit both taxpayers and the CCRA. These benefits include long-term time savings, efficient resolution of recurring complex matters, greater certainty about transfer pricing issues, potential application of findings to past years, and the minimization of global risk.

## ***Glossary of Terms and Abbreviations***

7. The following list defines various terms and abbreviations used in this Information Circular.

<b>Act</b>	Canadian <i>Income Tax Act</i> .
<b>APA</b>	An advance pricing arrangement between the Minister of National Revenue and a taxpayer. It covers certain transactions and arrangements between the taxpayer and non-resident entities. APAs confirm appropriate transfer pricing methodologies, in advance, and their application to specific cross-border non-arm's length transactions or arrangements for specified periods of time, under specified terms and conditions, for purposes of the Act. When appropriate, the Canadian competent authority may enter into a BAPA or MAPA with its foreign counterparts under the mutual agreement procedure article of the relevant income tax treaty, as described below. Appendix VI is an example of an APA.
<b>APA request</b>	A letter that a taxpayer files with the CCRA to request an APA. This may include a request for a BAPA or MAPA under the mutual agreement procedure article in the relevant income tax treaty. This letter includes an authorization, as discussed in paragraph 19. Appendix II is an example of a BAPA request letter.

<b>APA submission</b>	All information, records, documents, and explanations provided by a taxpayer and authorized representatives to the CCRA during the APA process regarding the proposals in an accepted APA request. Usually, the taxpayer will send an initial APA submission after the CCRA has accepted the APA request and the required user charge has been paid. Appendix IV is an APA submission checklist.
<b>Arm's length allocation</b>	An allocation of profit or loss in respect of a transaction that would have occurred between the participants in the transaction if they had been dealing at arm's length with each other.
<b>Arm's length transfer price</b>	An amount in respect of a transaction that would have been a transfer price in respect of the transaction if the participants in the transaction had been dealing at arm's length with each other.
<b>BAPA</b>	A bilateral APA between the Canadian competent authority and the competent authority of a country with which Canada has an income tax treaty. It includes an agreement, under the mutual agreement procedure article in the relevant income tax treaty, covering certain transactions or arrangements between the taxpayer and non-resident entities.
<b>CCRA</b>	Canada Customs and Revenue Agency.
<b>Canadian competent authority</b>	The Minister of National Revenue or the Minister's authorized representative.
<b>Case officer</b>	A representative of the Canadian Competent Authority Services Division of ITD who coordinates all aspects of the APA.
<b>Case plan</b>	A schedule to which the CCRA and the taxpayer agree that sets out milestones and tentative completion dates for an APA. Appendix V is an example of a BAPA case plan.

<b>Critical assumption</b>	Any assumed objective criterion that would significantly affect the substantive terms of an APA if the underlying conditions changed, whether or not the change is within the taxpayer's control. It could include any fact or condition about the taxpayer, a third party, or an industry, such as a new business strategy or mode of conducting operations, or the cessation or transfer of a business segment or entity covered by the APA.
<b>Director General</b>	Director General of the ITD.
<b>ITD</b>	International Tax Directorate of the CCRA.
<b>MAPA</b>	A multilateral APA between the Canadian competent authority and the competent authorities of two or more countries with which Canada has income tax treaties. It includes an agreement, under the mutual agreement procedure articles in the relevant income tax treaties, covering certain transactions or arrangements between the taxpayer and non-resident entities.
<b>Non-resident entity</b>	A non-resident person participating in an APA with whom a taxpayer does not deal at arm's length for the purposes of the Act.
<b>OECD</b>	Organisation for Economic Co-operation and Development.
<b>TPM</b>	Transfer pricing methodology. It is a basis for establishing an arm's length transfer price or allocation under section 247 of the Act and, when applicable, under various income tax treaties between Canada and foreign governments.
<b>Transfer price</b>	The price at which parties trade services, tangible property, and intangible property across international borders.
<b>TSO</b>	A tax services office of the CCRA.
<b>Unilateral APA</b>	An APA effective for Canadian income tax purposes only.

### ***Part I – Purpose and Scope of APAs***

**8.** The purpose of the APA program is to provide a co-operative process for resolving transfer pricing issues prospectively.

**9.** The APA process is designed to produce an APA specifying the:

- taxpayer and the non-resident entities;
- nature and scope of transactions to be covered;
- appropriate TPMs to be employed;
- period for which an APA is to be effective; and
- other terms and conditions.

**10.** The APA process includes the following stages:

- prefiling meeting(s);
- the APA request;
- the acceptance letter;
- the APA submission;
- preliminary review of the APA submission and establishment of a case plan;
- review, analysis, and evaluation;
- negotiations;
- agreements;
- the post-settlement meeting; and
- APA compliance.

**11.** We will accept APA requests for current transactions and specified future transactions that are not hypothetical. An APA will apply only to the taxpayer who is party to it and to the participants, transactions, and time periods specified in it. Each APA is unique and based solely on the facts and circumstances of the case.

**12.** We may also consider issues similar or related to transfer pricing, such as the proper attribution of income between a permanent establishment and other parts of the same entity.

**13.** You may ask, or the relevant TSO may decide, to apply the terms and conditions of an APA retroactively to non-statute-barred taxation years. ITD will discuss the issue of retroactive application with the taxpayer, the responsible TSO and the non-resident entities' tax administrations, if appropriate, as soon as possible during the process. This should only occur when the facts and circumstances of the open prior years were similar to those on which the APA was concluded. A request to retroactively apply the terms and conditions of an APA is separate and distinct from an APA request.

**14.** You should ensure that the taxation years relating to the request for retroactive application do not become statute-barred in Canada and in the relevant foreign jurisdiction. You should protect your status in Canada by filing waivers, throughout the process as necessary, in the form outlined in subparagraph 152(4)(a)(ii) of the Act, and by having the non-resident entities take any similar action necessary with their tax administrations.

15. In the course of a transfer pricing audit, you may ask the Director General and Assistant Director of Compliance Programs of the responsible TSO to consider an APA for future years and, possibly, to apply the APA findings retroactively to the years under audit, under paragraph 13. Such early consideration of an APA, or “on-time referral,” would allow ITD and TSO field staff to inform you of various channels for resolving problems and to decide on the appropriate approach for the case. Merely filing an APA request or submission will not prevent or defer an audit of the years prior to the proposed APA years.

16. The APA program and the audit programs of the CCRA are separate and distinct. Filing an APA request or submission neither automatically nor independently initiates an audit. CCRA staff responsible for each of these programs will endeavour to co-ordinate their program efforts and responsibilities to achieve maximum efficiency and benefits for both taxpayers and the CCRA—for example, they will work together when a taxpayer seeking an APA has an audit protocol in place or under consideration. An audit protocol between the CCRA and a taxpayer establishes a clear framework for the audit and covers domestic and international tax issues. It is not a substitute for the APA program, which is the only program that ensures a taxpayer’s TPM and its application are acceptable under the Act for a specified number of future years. When you comply with the terms and conditions of an APA, we will consider that the results of applying the agreed TPMs have satisfied section 247 of the Act for the transactions and periods specified in the APA.

## ***Part II – Prefiling Meeting(s)***

17. The prefiling meeting(s) should be held within 180 days after the end of the first taxation year that is to be covered by the APA. If they are not completed by that date, the APA will usually not cover transactions of that first taxation year.

18. Prefiling meeting(s) are attended by you, your representatives, and CCRA officials to explore the suitability of an APA, and to informally discuss the APA process and the matters set out in this information circular. When asked, we will conduct discussions on an anonymous basis. This process may lead you to file a formal APA request. Appendix I outlines the purposes of a prefiling meeting, which include giving the CCRA an opportunity to commit to accepting a forthcoming APA request.

19. You must provide an APA request information package at least two weeks before the prefiling meeting. A written authorization must be included for each of your representatives throughout the APA process. This will allow us to release confidential taxpayer information related to the APA process to your designated representative(s), and examine and discuss that information with them. This prefiling information package usually addresses the points noted in Appendix I.

20. Prefiling meeting(s) also give us an opportunity to tell you about the types of information likely to be needed for the APA submission.

## ***Part III – Processing an APA Request***

### **Accepting an APA request**

21. We will consider requests for BAPAs, MAPAs, and unilateral APAs. We will confirm our commitment to accept a request for a BAPA, MAPA, or unilateral APA, as discussed in paragraph 18, by sending you an acceptance letter usually within 45 days after receiving your APA request. The acceptance letter will set out the user charge to be paid, as outlined in paragraph 27, and other terms and conditions under which we will pursue your APA request. You need to identify all authorized representatives in your APA request. The CCRA may transmit all correspondence and other information electronically, if you include, in your APA request, authorization for electronic transmission of information. Appendices II and III are examples of a BAPA request and acceptance letter, respectively.

22. We prefer to enter into BAPAs or MAPAs. If you request a unilateral APA, you must state why you are not requesting a BAPA or MAPA, if the proposed transactions involve countries with which Canada has income tax treaties. The APA process does not limit the CCRA from notifying a treaty partner in accordance with the relevant treaty that we have accepted a unilateral APA request. If the competent authority later needs to resolve potential double taxation arising from applying a unilateral APA, the provisions of Part VI “Competent Authority Consideration” will apply.

### **Declining an APA request**

23. In some circumstances, it may not be appropriate for us to accept or pursue an APA request. We may exercise our discretion and decline to consider such a request. After accepting a request, we would decline to pursue or conclude an APA only in extraordinary circumstances.

24. If we propose to decline an APA request, or we propose not to pursue an APA, we will tell you why and give you the opportunity to make further representations. For example, we may decline an APA request when the central issue involves a matter that is before the courts.

### **Withdrawing an APA request**

25. You may withdraw your APA request at any time.

26. If you withdraw an APA request, neither you nor the CCRA will have any obligations to each other. Any previous undertakings and understandings relating to your APA request will be of no further force and effect. Paragraph 34 and Part VIII “Use, Disclosure, and Protection of Information” will apply to any information you have submitted to us.

## User charges

27. We will levy a non-refundable user charge for each accepted APA request or renewal to cover anticipated “out-of-pocket” costs, such as travel and accommodation expenses. The need for travel will be carefully evaluated. Currently there is no charge for staff time.

28. User charges for APAs will be:

- outlined in an APA acceptance letter between you and the CCRA; and
- payable upon your reply to the CCRA’s APA acceptance letter.

## Case assignment

29. After we have accepted your APA request, as noted in paragraphs 21 and 22, and you have signed and returned the APA acceptance letter and paid the required user charge, a multi-disciplinary team will be assigned to your case. A team led by a case officer usually comprises an accountant/auditor, an economist, TSO audit personnel, other CCRA specialists, and legal counsel. The case officer will contact you usually within 30 days after receiving the signed acceptance letter to discuss any concerns you may have about preparing your APA submission. The case officer will co-ordinate further work and information requirements regarding your APA request with you, the non-resident entities, the team, and, in the case of a BAPA or MAPA, with the relevant competent authorities.

30. Although the case officer is responsible for the APA, all team members generally participate in the stages of the APA process noted in paragraph 10. They help develop and resolve the case based on their background, knowledge, and experience. For example, in most instances, the TSO representative has extensive knowledge of the taxpayer’s business and operations and significant exposure to the related industry. However, the TSO representative usually does not participate in BAPA or MAPA negotiations, as those take place between competent authorities.

## Part IV – Content of an APA Submission

### General

31. You should make sure we have all the information we need to decide on the appropriateness of the proposals in your APA submission. All APA submissions do not require the same degree of information, or economic or legal analysis.

32. Once we have accepted your APA request and the team has carried out a preliminary review of your APA submission, the case officer will discuss a case plan with you, your representatives, and, in the case of a BAPA or MAPA, the participating foreign tax administration(s). To

help you monitor your APA request, the case officer will contact you or your representatives, as mutually agreed as part of the case plan, to discuss the status of your APA request, and to review and update the case plan, if necessary. Appendix V sets out the framework of a typical case plan.

33. You need to state whether any of the non-resident entities resides in or conducts activities in a foreign country that has a tax treaty with Canada, and whether you want the Canadian competent authority to seek a BAPA or MAPA with the competent authorities of the pertinent foreign countries.

34. We will retain all information and material provided throughout the APA process, whether an APA is concluded or you withdraw your APA request. Therefore, we suggest you do not submit original documents. Refer to Part VIII “Use, Disclosure, and Protection of Information.”

35. You should provide three copies of all documents relating to the APA submission to the Director General at the address noted in paragraph 111, including documents you send later in response to our requests or to requests of a participating foreign tax administration. You should also provide your APA submission in acceptable electronic format, for example on diskette.

36. All data you submit should be properly labelled, indexed, and referenced in the submission. If there are too many records or documents to include with the submission, you will have to:

- certify that the items exist when you tender your submission;
- state where the items are located;
- provide a contact from whom the CCRA can get the items; and
- confirm that the items will be promptly made available on request.

37. Any information we request should be made available to us within a reasonable period of time, as mutually agreed, from the date of the request. Otherwise, we may defer our pursuit of your APA, ask you to withdraw from the process, or terminate the process.

38. We will mutually agree on reasonable cut-off dates for receiving final information. In certain circumstances additional information may be required for clarification purposes. To speed up the negotiation stage of the process, you should make sure that the participating competent authorities have the same information at the same time throughout the process.

39. You must submit all documents in English or French.

40. The above requirements apply to all communications throughout the APA process.

## Items for inclusion in an APA submission

**41.** The APA submission must include detailed information about you and about the non-resident entities involved in the proposed APA. The particulars of the case will determine the information you need to submit. See Appendix IV for a checklist that will help you prepare a submission.

**42.** You have to provide all information needed to establish the appropriateness of a proposed TPM.

## Explanation of a proposed TPM

**43.** You should discuss your proposed TPM and provide a detailed analysis and explanation of it in accordance with the current version of Information Circular 87-2 and the OECD Guidelines. Furthermore, you should explain why your proposed TPM is appropriate in your situation. All participants in the APA process will review and discuss your proposed TPM. As a result, the TPM you originally proposed, a revised version of it, or an alternative TPM, may be incorporated into the final APA.

**44.** In the case of a MAPA request, facts, circumstances, and markets may differ in each of the participating countries. Therefore, the same TPM, and the same APA terms and conditions, may not be suitable in all respects for all participating countries. Furthermore, as noted in paragraph 11, an APA will apply only to those transactions, and for those participants and time periods, specified in the APA.

**45.** You will need to show the effect of a proposed TPM on the covered transactions by applying it consistently to the previous three years, or the most recent business cycle if appropriate, and to the time period you want the APA to cover, to the extent practicable. We require this data for the purpose of testing this TPM. When application of the proposed TPM to your financial and tax data, and to the data of the non-resident entities, produces amounts or results that deviate from those reported under the transfer pricing methods you and the non-resident entities used during that period, you must explain why the proposed TPM better reflects arm's length amounts or results.

**46.** If you consider the previous three-year period inappropriate for any reason, choose another time period, explaining why you selected it.

**47.** When there are no reliable historical data to show the effect of a proposed TPM on the prior or future years—for example, when the proposed TPM applies to new entities, products, processes, business segments, or activities—we will work with you during and after the prefiling meeting(s) to determine what alternative data will likely be necessary.

## Independent experts

**48.** An independent expert is any person with specialized skills, knowledge, education, or experience in a field of study, industry, or geographic area relevant to an APA.

**49.** In exceptional or complex cases, you may suggest in your APA request that an expert is needed or we may determine that an independent expert is required to help evaluate your APA submission. If the opinion of an independent expert is necessary, you will have to provide, usually at your own expense, an independent expert to review the proposed TPMs or other issues.

**50.** You, the CCRA, and the participating foreign tax administration(s), select the independent expert and will discuss the expert's mandate. The independent expert will analyze your APA submission and provide a written opinion and the basis for the opinion and conclusions reached.

**51.** If an independent expert is necessary, we will ask you to give us written authorization to examine and discuss your APA request and submission, and other relevant information, with the expert.

**52.** The independent expert's opinion will not be binding on any of the relevant participants in the APA process. The participating tax administrations will have full access to the expert's report and supporting documentation.

## Critical assumptions

**53.** You must present a set of critical assumptions under which a proposed TPM would operate. You should establish and describe them in detail in your APA submission.

**54.** An APA may be revised or cancelled if there is a failure to meet a critical assumption during the term of an APA. If such a failure occurs, you must notify us in writing promptly after the failure. In this notification, you should describe and explain any failure to meet a critical assumption and give the reasons for the failure. The parties will discuss how the APA may be revised in light of the changed circumstances. If the APA cannot be revised, then it may be cancelled. The decision to revise or cancel an APA would be made after the participants in the APA process have examined and evaluated the impact of any changes in critical assumptions on the APA. See paragraphs 93 to 99.

## Term of an APA

**55.** You should propose an initial term for an APA, giving appropriate consideration to the industry and transactions involved. The term of an APA is usually three to five years, but that may vary depending on the facts, circumstances, and resolution of the particular case. Refer to paragraph 17 for the first taxation year to be covered under an APA.

## Declaration statement

**56.** Your initial APA submission must include a statement in the following form:

I declare that I have examined this initial APA submission, including accompanying documents, and, to the best of my knowledge, all information presented in this APA submission is complete and accurate in all material respects.

**57.** One of your authorized officers must sign the above statement.

## *Part V – Case Work and Resolution*

### Review, analysis, and evaluation

**58.** Usually we deal with APAs in the order that we receive the APA submission.

**59.** Our team will review your APA submission in detail, according to the case plan. While we try to conclude cases on a timely basis, there are often factors outside our control that may cause delays. We will advise you if we expect any unusual delay.

**60.** The team may conduct site visits to gain a better understanding of your business and the related industry, to clarify issues and matters in your APA submission with appropriate personnel, and to gather more information.

**61.** A key step in the case plan is the interim joint meeting, noted in Appendix V, involving, if possible, all participants in the APA process. It gives all involved the opportunity to agree on the understanding of the facts and circumstances underlying the APA request. Based on this review, and taking into account the other information we may have gathered from site visits or other sources, we may ask you and the non-resident entities for more information and explanations.

**62.** We may also ask you or the non-resident entities to do additional accounting or economic analyses.

**63.** We will analyze and evaluate the information we have gathered and generated, using it as a basis for our position.

**64.** At the end of the review, analysis, and evaluation stage of the APA process, we will discuss our general position with you. We will formalize our position, generally within 12 months of receiving an APA submission according to Part IV “Content of an APA Submission” and the case plan described in paragraph 32. This target is dependent upon the co-operation of all participants involved in the APA process, their willingness to work together in accordance with the case plan, the complexity of the case, and the quality of the information provided during the APA process. When possible, we will exchange position papers with the relevant participating foreign tax administrations before beginning negotiations.

## Negotiations and agreements

**65.** Neither you nor the non-resident entities will be directly involved in competent authority negotiations. However, we may ask you or the non-resident entities to be available to respond to any questions the competent authorities may have during negotiation sessions.

**66.** In the case of a BAPA request, once competent authority negotiations have been successfully concluded, and the terms and conditions have been confirmed with you and the non-resident entities, we will try to conclude the BAPA with the other competent authority according to the case plan, usually within 30 days. We will then enter into an arrangement with you, which will constitute the APA, usually within 60 days of the BAPA. Generally it will take longer to conclude the relevant competent authority agreements for a MAPA.

**67.** In the case of a unilateral APA request, once the terms and conditions have been confirmed with you, we will try to conclude the unilateral APA with you according to the case plan, usually within 60 days.

### Post-settlement

**68.** We may arrange a post-settlement meeting with you to discuss terms of settlement, renewal considerations, the timeliness of the process, and any problems encountered during the process. This stage is intended to give both parties the opportunity to provide and receive feedback on their experiences and concerns, and to make sure that the process is continuously updated and improved.

## *Part VI – Competent Authority Consideration*

**69.** The purpose of pursuing a BAPA or MAPA is to avoid double taxation between you and a non-resident entity, which may happen when only a unilateral APA is in place. The APA process achieves maximum benefits for you when the competent authorities of two or more countries reach a BAPA or MAPA. If the competent authorities cannot reach a BAPA or MAPA, we may, nevertheless, provide a unilateral APA.

**70.** When the Canadian competent authority agrees to pursue a BAPA or MAPA with the competent authority of one or more treaty partners, there will be a mutual exchange of information with those treaty partners concerning all aspects of the APA process, including any subsequent revisions, cancellations, revocations, or requests for APA renewal, in accordance with the relevant tax treaties.

**71.** As discussed in paragraphs 43 and 44, the final TPM agreed on by the competent authorities in a BAPA or MAPA may differ from the TPM you proposed in your APA submission. You may reject this agreement and withdraw your APA request. However, if you do so, remember that should double taxation occur on the transactions you wanted

covered under the APA, the competent authorities' position on the issues previously considered under the APA request may remain the same.

**72.** If for any reason a BAPA or MAPA has not been concluded, and you and the CCRA have concluded a unilateral APA, you retain your rights to pursue the mutual agreement procedure available under the relevant tax treaty. However, if double taxation occurs on the transactions covered by your unilateral APA, the Canadian competent authority may, under the mutual agreement procedure article of the relevant tax treaty, deviate from the terms and conditions in your unilateral APA to resolve the matter with the relevant treaty partner. If you and the non-resident entities accept the settlement negotiated by the Canadian competent authority and the relevant foreign competent authority regarding the parties and transactions specifically covered by your unilateral APA, it will prevail over the terms and conditions of your unilateral APA.

### ***Part VII – Legal Effect***

**73.** An APA is regarded as binding on the CCRA and on you, subject to any qualifications stated in the APA and the comments in paragraphs 93 to 108.

**74.** The mere act of requesting an APA or filing an APA submission will not, by itself, constitute “reasonable efforts” for the taxation years proposed to be covered under the APA for the purposes of section 247 of the Act. When you comply with the terms and conditions of an APA, we will consider that the results of applying the agreed TPMs have satisfied section 247 of the Act for the transactions and periods specified in the APA. With respect to transactions covered by an APA, no penalty will be levied under subsection 247(3) of the Act for taxation years during which the APA remains in force.

### ***Part VIII – Use, Disclosure, and Protection of Information***

**75.** All information obtained or generated during the APA process is for the purpose of administering the Act. Consequently, the confidentiality provisions of the Act limit our rights and powers to use and disclose information submitted in connection with an APA request or submission. The confidentiality provision in the relevant income tax treaty will also apply. APAs, and the information we obtain or generate during the APA process, including commercially sensitive and proprietary data, relate directly to your potential tax liability under the Act.

**76.** Except as otherwise provided by written agreement, your APA may not be introduced by you or the CCRA as evidence in any administrative or judicial proceeding in relation to any taxation year, transaction, or person.

**77.** At our discretion, we may make publicly available certain statistics about the APA program. To this end, we may disclose general information about APAs, such as the number of APAs pending and in process, as well as the number and types of APAs concluded, and the TPMs employed. We will make all such disclosures according to the confidentiality provisions of the Act and the relevant treaty, as applicable.

## ***Part IX – Administering an APA***

### **APA reporting**

**78.** You will need to file APA reports according to the terms of your APA. An APA report will describe your actual operations for the period and demonstrate your compliance with the terms and conditions of your APA. An APA report has to address all items called for by the APA, and any requests to revise or cancel the related APA. Each APA is unique, and each will set out the particular requirements of its APA report, such as content, scope, filing date and joint APA reports in the case of a BAPA or MAPA. APA reports may require the items included in Appendix VI, section 7 of the example of an APA.

**79.** You need to file the original and two copies of each APA report with the Director General, within the time period specified in your APA.

**80.** We will review the APA report for any items requiring a specific response, such as a request to revise the APA, and will contact you if we need to clarify or complete information in the APA report.

**81.** The reviews of the APA report will be co-ordinated among the relevant TSO and representatives of the Canadian Competent Authority Services Division, as per paragraphs 89 and 90. They will review and evaluate the results of applying the agreed TPM and the information and explanations provided in the APA report. We will confer with you and the other participating tax administrations as necessary. The results of the review and consultation will determine what action, if any, would be appropriate in the circumstances—in other words, whether we need to propose adjustments to the reported results, or to revise, cancel, or revoke the APA.

**82.** If you do not file an APA report as required, we may cancel your APA.

### **Compensating adjustments**

**83.** An APA may include a provision to permit you and the non-resident entities to make a compensating adjustment. A compensating adjustment would bring recorded amounts or results of the covered transactions into agreement with the amounts or results of the covered transactions as determined by the application of the TPM set out in the APA. An APA may also provide that compensating adjustments be made throughout the taxation year to ensure that the relevant amounts of the covered transactions conform as closely as



possible to the final amounts of the covered transactions that would be arrived at by applying the TPM agreed to under your APA. These interim compensating adjustments should minimize the amount of the compensating adjustment that may be required at or after year-end.

**84.** A subsequent compensating adjustment may arise when, after you have filed a tax return for an APA year, you or the CCRA makes usual and routine adjustments—for example, to correct mathematical errors—to the determination and computation of relevant arm’s length transfer prices or allocations in accordance with your APA. When a subsequent compensating adjustment arises as a result of a proposal by a participating foreign tax administration, you have to provide notice to the CCRA within 90 days of the date of the proposal.

**85.** Your taxable income for an APA year will take into account all compensating adjustments and subsequent compensating adjustments, as computed in accordance with your APA, and will be used for all Canadian federal income tax purposes (including foreign tax credits and withholding taxes, if the nature of the adjustment requires these). If a liability arises from a compensating adjustment or subsequent compensating adjustment, we will deem it to accrue as of the last day of the APA year to which it relates, and will take it into account for interest purposes and when computing any required tax instalments for that APA year or later taxation years.

**86.** The required compensating adjustment shall be paid generally within 180 days of the end of the paying entity’s taxation year to which the compensating adjustment relates. Any subsequent compensating adjustment that you or with your agreement the CCRA makes, must be paid within 90 days of the date of reassessment.

**87.** You and non-resident entities may use any payment method, as mutually agreed to between you and the CCRA, to settle compensating adjustments or subsequent compensating adjustments. These payments are to be made in the currency in which payments between you and the non-resident entities are made for the transactions covered by the APA.

**88.** An APA may be cancelled if you or the non-resident entities do not pay the liability arising from a compensating adjustment or subsequent compensating adjustment, when due.

## Auditing an APA

**89.** You and non-resident entities must maintain books and records that allow us to determine your compliance with your APA. TSOs audit APAs as part of the regular audit cycle. They will not re-evaluate the TPMs or other terms and conditions agreed to in an APA. Their audit of the APA will be limited to establishing your compliance with the terms and conditions of your APA and whether:

- material representations in your APA request, the related submissions, and the periodic APA reports remain valid and accurately describe your operations and those of non-resident entities;
- you applied the agreed-upon TPMs consistently in accordance with the terms and conditions of your APA;
- supporting data and calculations used in applying the agreed-upon TPMs were correct in all material respects; and
- critical assumptions underlying your APA remain valid and relevant.

**90.** The relevant TSOs may consult with representatives of the Canadian Competent Authority Services Division on the scope and results of APA audits. After consulting with the Director General, a TSO may propose adjustments. Such proposed adjustments will not affect the continuing validity or applicability of your APA. If you agree with the proposed adjustments, they will be treated as subsequent compensating adjustments for purposes of paragraphs 84 to 88.

## Resolving disputes

**91.** If a TSO determines that any matter outlined in paragraph 89 has not been resolved, or if you do not agree with any proposed adjustment, TSO officials will submit the issue to the Director General. The Director General may decide to:

- have the TSO abide by the Director General’s interpretation of the terms of the APA;
- revise the APA with your concurrence (see paragraphs 93 to 96);
- cancel the APA (see paragraphs 97 to 99); or
- revoke the APA (see paragraphs 100 to 102).

**92.** Resolution of disputes may include interpreting any term of an APA, and deciding on issues such as whether a given transaction is a covered transaction, and whether you have retained the proper records. The Director General’s decision is not subject to appeal. If you file tax returns in a manner inconsistent with the Director General’s interpretation of an APA, the APA may be cancelled or revoked. In such a case, you may contest the adjustments through the usual appeal process outlined in the Act as if the APA had never existed.

## Revising an APA

**93.** Your APA may be revised if it is established that:

- there has been a failure to meet a critical assumption;
- there has been a change in law, including a treaty provision, that modifies the Canadian federal income tax treatment of any matter covered by your APA;
- there has been a material change in circumstances; or
- the participating foreign tax administration’s APA is not consistent with your APA or has been revised, cancelled, or revoked.

**94.** If you believe your APA requires revision, you should notify the Director General promptly. The notice should set out the reasons for the proposed revision and include supporting documentation.

**95.** If you and the Director General agree on a revised APA, the effective date of that arrangement will be stated in that APA. If you fail to sign a revised APA, the Director General may cancel your APA.

**96.** When a BAPA or MAPA is involved, and both you and the CCRA agree to revise your APA, we will submit the revised APA to the relevant competent authority of the other country(ies) for consideration. The relevant participants in the APA process, when appropriate, will discuss how to revise the BAPA or MAPA. If the relevant competent authorities fail to conclude a revised BAPA or MAPA, the CCRA may:

- continue to apply your APA;
- apply the revised APA; or
- cancel your APA.

## Canceling an APA

**97.** The CCRA may cancel your APA if it is established that:

- you or the non-resident entities made any material misrepresentation, mistake, or omission in the APA request, APA submission, related APA reports, or subsequent APA renewal submissions, or in supplying, or failing to supply, any relevant information under this information circular;
- you or the non-resident entities failed to comply with any material term or condition of the APA;
- there has been a failure to meet a critical assumption;
- there has been a change in law, including a treaty provision, that modifies the Canadian federal income tax treatment of any matter covered by your APA;
- the participating foreign tax administration's APA is not consistent with your APA or has been revised, cancelled, or revoked; or
- there has been a failure to conclude or sign a revised APA, BAPA or MAPA.

**98.** When we cancel an APA:

- we will give you a written statement specifying the grounds for the cancellation;
- we will inform the relevant treaty partners;
- the cancellation usually will be effective as of the beginning of the taxation year which relates to the circumstances listed in paragraph 97;
- it will cease to be of any further force and effect on you or the Minister of National Revenue, as of the effective date of the cancellation; and

- after the effective date of the cancellation, the transactions previously covered by your APA will be subject to the provisions of the Act and the tax treaties that apply.

**99.** If the participating foreign tax administration cancels the APA, you should notify the Director General promptly after such action.

## Revoking an APA

**100.** We may revoke your APA if it is established that:

- you or the non-resident entities made any material misrepresentation attributable to neglect, carelessness, or willful default in the APA request, APA submission, related APA reports, or subsequent APA renewal submissions, or in supplying, or failing to supply, any relevant information under this information circular;
- you or the non-resident entities failed to comply with any material term or condition of the APA; or
- the participating foreign tax administration's APA is not consistent with your APA or has been revised, cancelled, or revoked.

**101.** When we revoke an APA:

- we will give you a written statement specifying the grounds for the revocation;
- we will inform the relevant treaty partners;
- such revocation will be effective from the first day of the first APA year, and the APA will be of no force and effect with respect to the taxpayer and the Minister of National Revenue as though it had never been signed;
- after the effective date of the revocation, the transactions previously covered by your APA will be subject to the provisions of the Act and the tax treaties that apply.

**102.** If the participating foreign tax administration revokes the APA you should notify the Director General promptly after such action.

## Renewing an APA

**103.** Requests to renew your APA will follow the same form and procedures in effect at the time the request for renewal is made that apply to initial APA requests. You should submit appropriate updated supporting documentation, similar to that required for your initial APA request and submission, with the renewal request.

**104.** You have to file a request to renew an APA, except as otherwise provided for under the terms of an APA, within a reasonable time, but usually no later than nine months before the current APA expires. When you are determining the request date for any particular APA renewal request, consider the specific facts and circumstances associated with the request, and the scope and complexity of the material contained in the renewal submission, including the degree to which facts, critical assumptions, or underlying circumstances of the previous APA have changed.

**105.** We may renew your APA under similar terms and conditions on request, when both you and the CCRA are satisfied that the TPMs in your previous APA continue to be appropriate and that:

- there have been no material changes in the facts and circumstances underlying the APA and the critical assumptions remain valid and relevant; and
- you have complied with the terms and conditions of the previous APA.

**106.** Proposed amendments to your APA—together with updated studies, analyses, and supporting documentation—have to accompany your request to renew your APA when:

- material changes have occurred in the facts, circumstances, or critical assumptions underlying your APA; or
- the previous APA did not adequately consider subsequent economic, technical, product, or industry developments.

**107.** We will evaluate your renewal request, taking into account the amendments to the previous APA needed in light of changed facts and circumstances. The renewal process will focus on updating the critical assumptions and facts agreed to in the initial APA and amending related calculations.

**108.** We will try to obtain agreement on renewing the related BAPA or MAPA with the competent authority of the relevant treaty partners in accordance with Part VI “Competent Authority Consideration.”

## ***Part X – Other References***

**109.** This information circular relates to issues addressed by the publications noted below, and complements rather than substitutes for the criteria, procedures, and requirements set out in them:

- **Information Circular 70-6** – *Advance Income Tax Rulings*;
- **Information Circular 71-17** – *Requests for Competent Authority Consideration Under Mutual Agreement Procedures in Income Tax Conventions*;
- **Information Circular 87-2** – *International Transfer Pricing*; and
- **Interpretation Bulletin IT-419** – *Meaning of Arm’s length*.

**110.** You should read this information circular in conjunction with the above-noted CCRA publications, as amended from time to time.

## ***Part XI – Further Contact***

**111.** To get information about the APA program, telephone (613) 957-8859, email us at **ITD-APA@ccra.gc.ca**, or contact:

Director General  
International Tax Directorate  
Canada Customs and Revenue Agency  
Ottawa ON K1A 0L5  
CANADA

Attention: Director, Competent Authority Services  
Division

## Prefiling Meeting(s)

### 1. A prefiling meeting gives the parties an opportunity to discuss the:

- (a) specific parties and participants to be included in the APA process (unless the prefiling meeting is conducted on an anonymous basis);
- (b) nature and scope of the transactions to be covered under the APA;
- (c) data, documentation, and analyses that may be needed;
- (d) possible need for independent experts;
- (e) proposed TPMs;
- (f) countries involved, your desire for a unilateral, bilateral, or multilateral APA, and the possibility for a BAPA or MAPA among the relevant competent authorities;
- (g) APA years to be covered;
- (h) possible retroactive application of the APA;
- (i) possible need for waivers;
- (j) use, disclosure, and protection of information obtained or generated during the APA process;
- (k) estimated user charge;
- (l) CCRA team members;
- (m) CCRA's commitment to accept the APA request; and
- (n) co-ordination and scheduling of the subsequent phases in the APA process.

### 2. To the extent practicable, your APA request information package should address the following points:

- (a) the global organizational structure of the multinational enterprise and the industry in which it operates;
- (b) the parties, participants, transactions, and transaction flows proposed to be covered;
- (c) the transfer pricing, audit and reassessment history, and related domestic or foreign tax audit issues and status;
- (d) the history of competent authority issues, requests, and settlements;
- (e) the reasons for requesting the APA;
- (f) relevant transfer pricing policies, methodologies, practices, and accounting systems and policies;
- (g) the TPMs contemplated under the APA and the underlying rationale;
- (h) the impact of the proposed TPMs on taxable income;
- (i) relevant key interpretative or technical taxation issues;
- (j) the reasons for requesting a BAPA or MAPA, the countries involved, and the nature and extent of previous communications with those tax administrations;
- (k) the key individuals (including taxpayer's officials or employees and any experts, advisors, and other representatives) who will be involved throughout the APA process; and
- (l) other information you consider pertinent.

Written authorization(s) must be included as per paragraph 19 of this information circular for each of your representatives throughout the APA process.

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**Example of a BAPA Request Letter**

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*TAXPAYER'S LETTERHEAD*

---

[DATE]

**PRIVATE AND CONFIDENTIAL**

Director General  
International Tax Directorate  
Canada Customs and Revenue Agency  
Ottawa ON K1A 0L5

**Attention: Director, Competent Authority Services Division****Re: Bilateral Advance Pricing Arrangement (BAPA) Request**

Further to our advance pricing arrangement (APA) pre-filing meeting(s) of [DATE(S)] at your offices in Ottawa, this will confirm that [NAME OF THE TAXPAYER] wishes to negotiate an APA with the Canada Customs and Revenue Agency (CCRA) for certain transactions between [NAME OF THE TAXPAYER] and [NAME OF THE NON-RESIDENT ENTITY]. As discussed, [NAME OF THE NON-RESIDENT ENTITY] intends to apply for an APA with [NAME OF THE FOREIGN TAX ADMINISTRATION] as part of a BAPA with Canada.

The transactions to be covered in the APA will be [*DESCRIBE THE COVERED TRANSACTIONS*]. As discussed in the meeting(s), we propose that the initial APA cover a period of [NUMBER] years, specifically the taxation years ending [MONTH, DAY, 200X, 200X<sub>1</sub>, 200X<sub>2</sub>, 200X<sub>3</sub>, etc.]. The individual(s) authorized to represent [NAME OF THE TAXPAYER] for this BAPA is(are) [NAME OF THE PERSON(S), FIRM(S)]. The CCRA may provide taxpayer information relating to [NAME OF THE TAXPAYER] to the above-named representative(s). Copies of all correspondence should be provided to [NAME OF THE INDIVIDUAL WHO WILL RECEIVE CORRESPONDENCE].

We understand that the CCRA is agreeable to proceeding with this BAPA request and that you will send an acceptance letter to [NAME OF THE TAXPAYER] setting out your user charge for this matter. We intend to proceed with a formal APA submission as soon as possible after receiving your confirmation of acceptance.

With respect to future communications, we authorize the CCRA to electronically transmit all correspondence or other information concerning the BAPA, as necessary, to all involved. We are aware that the CCRA does not ensure the security of electronic communications and accept the risks inherent in sending correspondence or other information electronically. We agree not to hold the CCRA or its employees liable for any damage or loss, however caused, arising out of the electronic transmission of correspondence and other information related to our BAPA.

Should you have any further questions on our application at this time, please contact [NAME OF THE PRIMARY CONTACT] at [TELEPHONE NUMBER].

Yours sincerely,

[NAME OF THE AUTHORIZED OFFICER OF THE TAXPAYER]  
Authorized officer of [NAME OF THE TAXPAYER]

**Example of a BAPA Acceptance Letter**

[NAME OF THE TAXPAYER]  
[ADDRESS OF THE TAXPAYER]

**Attention:**

Dear Madame/Sir:

**Re: [NAME OF THE TAXPAYER]  
Bilateral Advance Pricing Arrangement (BAPA) Request**

This is in response to your BAPA request letter of [DATE], regarding your request for a bilateral advance pricing arrangement (BAPA) involving [NAMES OF THE TAXPAYER AND NON-RESIDENT ENTITY], and [NAME OF THE FOREIGN TAX ADMINISTRATION]. It concerns the intercompany sales of certain [TYPES OF GOODS] to [NAME OF THE COMPANY] by [NAME OF THE COMPANY] and intercompany purchases of certain [TYPES OF GOODS] from [NAME OF THE COMPANY] by [NAME OF THE COMPANY].

An APA is designed to allow parties to agree in advance on a transfer pricing methodology (TPM) to be used to set an arm's-length transfer price for specified covered transactions, for the purposes of section 247 of the *Income Tax Act* of Canada and provisions in the relevant tax convention. If the Canada Customs and Revenue Agency (CCRA) enters into a BAPA with [NAME OF THE FOREIGN TAX ADMINISTRATION], the relevant taxpayers will avoid potential double taxation on transactions covered by the BAPA according to the provisions of the income tax treaty between Canada and [NAME OF THE FOREIGN COUNTRY].

As discussed, the CCRA agrees to pursue your BAPA request in accordance with Information Circular 94-4, *International Transfer Pricing: Advance Pricing Arrangements (APAs)*, subject to the following additional understandings:

1. You will remit the sum of \$[AMOUNT] (the BAPA charge) by cheque or money order payable to the Receiver General for Canada. This amount includes \$[AMOUNT] in goods and services tax/harmonized sales tax (GST/HST). Our GST/HST registration number is [NUMBER].
2. The BAPA charge is a final non-refundable charge. No portion of this payment will be refunded if you withdraw your BAPA request, or if the CCRA declines to complete the BAPA or a corresponding unilateral APA. We will work on your BAPA request only after we have received full payment of the BAPA charge.
3. The BAPA charge does not include any costs of engaging independent experts or specialists that the CCRA or officials of [NAME OF THE FOREIGN TAX ADMINISTRATION] may deem necessary during the pursuit of your BAPA request. If necessary, you and the CCRA (and officials of [NAME OF THE FOREIGN TAX ADMINISTRATION], if appropriate) will mutually select the independent experts or specialists. A separate agreement between you and the CCRA will outline the terms and conditions for engaging and compensating such independent experts or specialists.
4. You consent to the disclosure to the [NAME OF THE FOREIGN TAX ADMINISTRATION] of any information in your BAPA request for the taxation years [YEAR] through [YEAR], and any or all information later provided or generated during the pursuit of the request.
5. The CCRA is not obliged to conclude a BAPA or a corresponding unilateral advance pricing arrangement (APA). The final terms and conditions of your APA will depend on the facts and circumstances of your situation and will be established after the CCRA has reviewed and evaluated your submission. The final terms and conditions may therefore differ from those proposed in your request.

As we explained during our meeting, you are responsible for ensuring that the CCRA has all the information we need to properly evaluate your BAPA request. All information that the CCRA obtains or generates during the BAPA process relates directly to your potential tax liability under the *Income Tax Act* of Canada. We consider this information to be provided for the purpose of administering the *Income Tax Act* of Canada, regardless of any statements to the contrary by you or your representatives. The rules for using and disclosing information submitted with a BAPA request are set out in the confidentiality provisions of the *Income Tax Act* of Canada and the confidentiality provisions of the income tax treaty between Canada and [NAME OF THE FOREIGN COUNTRY].

Please show that you accept the above understandings by signing the enclosed copy of this letter in the appropriate space and returning it with your remittance of \$[AMOUNT]. We will then be able to coordinate the next phase of your BAPA request with you and officials of [NAME OF THE FOREIGN TAX ADMINISTRATION].

Thank you for your interest in our APA program. We look forward to working with you.

Yours sincerely,

Director General  
International Tax Directorate

Enclosure

Agreed on this date [DATE], by

[NAME OF THE TAXPAYER]

[NAME AND TITLE OF THE AUTHORIZED OFFICER OF THE TAXPAYER]

## APA Submission Checklist

The following checklist is only a guideline. We have provided it to help you organize and prepare your APA submission. Each APA submission is unique. Individual information requirements and submission format may vary from this checklist.

Detailed information requirements for particular cases will be determined, on a case-by-case basis, during prefiling and subsequent meetings.

Item	Notes
<b>I. Introduction</b>	
<input type="checkbox"/> Taxpayer, non-resident entities, and representatives <b>(Names, addresses, telephone numbers, relationships)</b>	
<input type="checkbox"/> Fiscal periods and business identification numbers of the taxpayer and non-resident entities	
<input type="checkbox"/> Proposed term of the APA including any request for retroactive application of the APA terms and conditions to non-statute-barred taxation years	
<input type="checkbox"/> Proposed transactions to be covered under the APA <b>(Description of the property or services to which the proposed APA relates)</b>	
<input type="checkbox"/> Proposed TPM(s)	
<input type="checkbox"/> Proposed terms and conditions, and critical assumptions, for the APA	
<input type="checkbox"/> Identify whether this is a request for a BAPA, MAPA, or unilateral APA	
<input type="checkbox"/> Declaration statement	
<input type="checkbox"/> History and background of the multinational enterprise	
<input type="checkbox"/> General description of business and products/services	
<input type="checkbox"/> Multinational structure, organizational arrangement, operational set-up, including major transaction flows	
<input type="checkbox"/> Identify all other transaction flows of the multinational enterprise (volumes, directions and amounts) that may have an impact on the pricing of the covered transactions	
<input type="checkbox"/> Functional currency for each entity and the currency which is used for the proposed transactions to be covered under the APA	
<input type="checkbox"/> Accounting and costing system, policies, procedures, and practices, including any significant financial and tax accounting differences that may affect the TPMs	



Item	Notes
<b>II. Functional analysis</b>	
<input type="checkbox"/> Detailed functional analysis of the taxpayer and all relevant entities with respect to the covered transactions, which may include, for example:	
<input type="checkbox"/> Activities/Functions <ul style="list-style-type: none"> <li>• Research and development, manufacturing, services, marketing and distribution, general and administrative</li> </ul>	
<input type="checkbox"/> Risks <ul style="list-style-type: none"> <li>• Technological, product, market, credit, foreign exchange, litigation</li> </ul>	
<input type="checkbox"/> Capital employed <ul style="list-style-type: none"> <li>• Tangible assets, working capital, intangible assets</li> </ul>	
<input type="checkbox"/> Business strategies – current and future <ul style="list-style-type: none"> <li>• Budget statements, projections and business plans for future period covered by proposed APA, general business and industry trends, future direction/business strategy including R&amp;D, production, and marketing</li> </ul>	
<input type="checkbox"/> Financial and operating information, including corporate annual reports <ul style="list-style-type: none"> <li>• Financial statements (income, balance sheet, and statement of changes in financial position) on a consolidated and unconsolidated basis for the prior five years, or the most recent business cycle as appropriate  (Also provide interim statements for the most recent period prior to the date of the submission)</li> <li>• Income tax returns and related supporting schedules for the prior three years including copies of Form T106, <i>Information Return of Non-Arm's Length Transactions With Non-Residents</i></li> <li>• Operating data (gross and net) segmented by product line, division, unit, and geographic region for the prior five years, or the most recent business cycle as appropriate</li> </ul>	
<input type="checkbox"/> Relevant marketing and financial studies	
<input type="checkbox"/> Copies of all relevant intercompany agreements (pricing, cost sharing, licensing, distributorship etc.)	

Item	Notes
<b>III. Industry and market analyses</b>	
<input type="checkbox"/> Detailed industry analysis <ul style="list-style-type: none"> <li>• Comprehensive description of industry as well as generally accepted industrial and commercial practices</li> <li>• Identification and general profile of competitors, including respective market shares</li> <li>• Industry and general business statistics, financial ratios, and analyses/studies</li> <li>• Critical success factors</li> </ul>	
<input type="checkbox"/> Detailed analysis of the markets for all countries involved	
<b>IV. Transfer pricing background</b>	
<input type="checkbox"/> Discussion of relevant legal considerations and requirements <ul style="list-style-type: none"> <li>• Canadian law</li> <li>• Foreign law</li> <li>• Income tax treaty between Canada and the foreign country</li> </ul>	
<input type="checkbox"/> Discussion of transfer pricing methodologies, policies, and practices used by the taxpayer and non-resident entities for the covered transactions during the past three years, or business cycle as appropriate	
<input type="checkbox"/> Discussion of relevant rulings, APAs/BAPAs/MAPAs, and other similar arrangements entered into with foreign tax administrations, for transfer pricing or other valuation bases, or other taxation matters entered into by the taxpayer (or its non-resident entities) and Canadian or foreign tax administrations	
<input type="checkbox"/> Discussion of relevant Canadian income tax audit, appeals, judicial and competent authority history	
<input type="checkbox"/> Discussion of relevant foreign income tax audit, appeals, judicial and competent authority history	
<input type="checkbox"/> Discussion of unassessed taxation years (Canadian and foreign) and related outstanding tax, legal, and other pertinent issues	

Item	Notes
<p><b>V. TPM analysis</b>  <b>(Provide all information, including detailed analyses and explanations needed to establish the appropriateness of a proposed TPM, in accordance with the current version of Information Circular 87-2, International Transfer Pricing, and the OECD Guidelines)</b></p>	
<p><input type="checkbox"/> Discussion and analysis of each transfer pricing method, applied or rejected, according to the hierarchy in Information Circular 87-2, paragraph 49, for each covered transaction. In particular provide details on accepted or rejected internal comparables.</p> <p><b>(Indicate assumptions, strategies, and policies that may have influenced the acceptance or rejection of each TPM)</b></p>	
<p><input type="checkbox"/> Summary of selected TPMs and secondary TPMs, if used as a check</p>	
<p><b>VI. Impact of proposed TPMs</b></p>	
<p><input type="checkbox"/> Application of the proposed TPMs to the covered transactions for the three prior years' operations or the most recent business cycle, and discuss results</p>	
<p><input type="checkbox"/> Application of the proposed TPMs to the time period you want the APA to cover and discuss results</p>	
<p><input type="checkbox"/> Discussion and quantification of the variance, if any, from the methodology applied in section IV</p>	

### Example of a BAPA Case Plan

<b>Proposed Timetable</b>		
<b>Activity</b>	<b>Target Date</b>	<b>Actual Date</b>
1. Prefiling meeting		
2. APA request filing		
3. Acceptance letter: <ul style="list-style-type: none"> <li>• Issuance of acceptance letter to the taxpayer</li> <li>• Issuance of notice of acceptance to the foreign tax administration</li> <li>• User charge received</li> </ul>		
4. APA submission filing		
5. Preliminary review of the APA submission by the team: the team will list key concerns, issues, and queries in preparation for the review, analysis and evaluation stage		
6. Review, analysis, and evaluation of the APA submission: <ul style="list-style-type: none"> <li>• Canadian site visit (if required): the APA team will spend time as needed to interview key personnel, discuss issues and concerns, and tour offices and plants</li> <li>• Foreign site visit (if required): the APA team will spend time as needed to interview key personnel, discuss issues and concerns, and tour offices and plants</li> <li>• Formal submission to taxpayer of questions and queries</li> <li>• Response from taxpayer</li> <li>• Analysis of responses and evaluation</li> <li>• Joint meeting between the CCRA, the foreign tax administration, the taxpayer, and the non-resident entity to give everyone a chance to agree on the facts, circumstances, and characterizations underlying the APA request and to raise any concerns, clarify any misunderstandings, and discuss the general direction of the case and alternative approaches if appropriate</li> <li>• Further queries and analyses of responses</li> <li>• Review of file and evaluation of TPM</li> <li>• Review of criteria for selecting comparables</li> <li>• Establishment of position</li> <li>• Exchange of position papers with the foreign competent authority</li> </ul>		
7. Negotiation with the foreign competent authority of terms and conditions, critical assumptions, and TPMs		

<b>Proposed Timetable</b>		
<b>Activity</b>	<b>Target Date</b>	<b>Actual Date</b>
8. Agreements: <ul style="list-style-type: none"> <li>• Conclusion of the BAPA with the foreign competent authority</li> <li>• Drafting of the domestic APA</li> </ul>		
9. Post-settlement meeting		

**PREPARED****DATE:****BY:**

\_\_\_\_\_

\_\_\_\_\_

**REVIEWED BY:****DATE:**

\_\_\_\_\_

\_\_\_\_\_

**NOTE:** These activities and milestones should be amended depending on the facts, circumstances, and requirements of each case.

**Example of an APA (Tangible Property)**

*The following APA is an example only. Each APA is unique and the terms and conditions may vary from those indicated in this appendix.*

**ADVANCE PRICING ARRANGEMENT**

**between**

**[NAME OF THE CANADIAN TAXPAYER]**

**and**

**THE MINISTER OF NATIONAL REVENUE**

**ADVANCE PRICING ARRANGEMENT**

between

**[NAME OF THE CANADIAN TAXPAYER]**

and

**THE MINISTER OF NATIONAL REVENUE**

This advance pricing arrangement (APA) is between [NAME OF THE CANADIAN TAXPAYER] (the “taxpayer”) and the Minister of National Revenue, through the Minister’s authorized representative, the Director General, International Tax Directorate.

**1. BACKGROUND**

The taxpayer is the [Canadian parent/subsidiary] of [NAME OF THE NON-RESIDENT ENTITY], a [NAME OF STATE/COUNTRY] foreign corporation.

*[DESCRIBE THE BUSINESS OF THE TAXPAYER AND THE NON-RESIDENT ENTITY’S BUSINESS]*

The taxpayer and the Minister of National Revenue (the “parties”) wish to establish a methodology to determine the transfer prices charged for the covered transactions that will constitute arm’s-length transfer prices for the purposes of section 247 of the Canadian *Income Tax Act* (the “Act”). The terms of this APA are consistent with the related competent authority agreement reached between the Canadian competent authority and the [NAME OF THE FOREIGN COMPETENT AUTHORITY] dated [DATE OF THE BAPA] pursuant to Article [NUMBER] of the [NAME OF THE RELEVANT CONVENTION].

The parties agree as follows:

**2. DEFINITIONS**

For purposes of this APA, the terms and expressions listed below shall have the following meaning:

**APA** – This advance pricing arrangement.

**APA request** – The taxpayer’s request dated [DATE] for an advance pricing arrangement, including the APA submission and any additional representations (oral or written), information, and supporting documents presented.

**APA years** – All taxation years of the taxpayer to be covered by this APA, the first one beginning on [DATE] and the last one ending on [DATE].

**CCRA** – The Canada Customs and Revenue Agency.

**Convention** – [NAME OF THE RELEVANT CONVENTION].

**Critical assumption** – Any assumed objective criterion that would significantly affect the substantive terms of the APA if the underlying conditions changed, whether or not the change is within the taxpayer’s control.

**Director General** – The Director General, International Tax Directorate, of the CCRA, or the Director General’s designate.

[NAME OF THE FOREIGN TAX ADMINISTRATION] APA – The advance pricing arrangement between the [NAME OF THE FOREIGN TAX ADMINISTRATION] and [NAME OF THE NON-RESIDENT ENTITY] that is intended to reflect the related competent authority agreement between the Canadian competent authority and the [NAME OF THE FOREIGN COMPETENT AUTHORITY] dated [DATE OF BAPA].

**TSO** – A tax services office of the CCRA.

### **3. COVERED TRANSACTIONS AND TERM**

This APA covers the following transactions between the taxpayer and [NAME OF THE NON-RESIDENT ENTITY] for the APA years:

*[LIST THE COVERED TRANSACTIONS]*

### **4. THE METHODOLOGY AND ITS APPLICATION**

The transfer prices charged in respect of the covered transactions shall be determined by the taxpayer in accordance with the following transfer pricing methodology (TPM):

*[DESCRIBE THE TPM]*

Amounts used under this TPM will be calculated, expressed, and paid in [NAME OF THE CURRENCY] or the equivalent. Foreign currency will be converted in accordance with [DESCRIBE].

### **5. EFFECT OF THE APA**

If the transfer prices charged for the covered transactions for an APA year have been determined by the taxpayer in accordance with the TPM, and the taxpayer has complied with the terms and conditions of this APA, the CCRA will consider that those transfer prices for that year are arm's length transfer prices for the purposes of section 247 of the *Act*.

### **6. CRITICAL ASSUMPTIONS**

For the purposes of this APA, the following critical assumptions apply:

- (a) the business activities and accounting policies and practices of the taxpayer and [NAME OF THE NON-RESIDENT ENTITY] shall remain substantially the same as described in the APA request;
- (b) *[LIST OTHER CRITICAL ASSUMPTIONS]*

If there is a failure to meet a critical assumption, the taxpayer must notify the Director General in writing within [NUMBER] days of becoming aware of the failure.

### **7. APA REPORTING**

For each APA year, the taxpayer shall file with the Director General and the [NAME OF THE FOREIGN TAX ADMINISTRATION] an annual report describing the taxpayer's and [NAME OF THE NON-RESIDENT ENTITY]'s actual operations for the year and demonstrating the extent of the taxpayer's and [NAME OF THE NON-RESIDENT ENTITY]'s compliance with the terms and conditions of this APA. The annual report is to include all items called for by this APA, and any requests to the Director General to revise or cancel this APA.

Each annual report is to include the following items:

- (1) a copy of the relevant [audited] financial statements of the taxpayer and [NAME OF THE NON-RESIDENT ENTITY] for that APA year;
- (2) a copy of all management and certification letters issued to the taxpayer or to [NAME OF THE NON-RESIDENT ENTITY] by [independent auditors/accountants] with respect to their [examination/review] of operations or [audit/compilation] of the financial statements of the taxpayer and [NAME OF THE NON-RESIDENT ENTITY] for that APA year, pertinent to any aspect of the determination of the transfer prices with respect to the covered transactions or compliance with the terms and conditions of this APA;



- (3) a copy of CCRA Form T106 and [equivalent forms of the [NAME OF THE FOREIGN TAX ADMINISTRATION] and accompanying schedules] reporting the covered transactions for the relevant APA year and an accounting of any differences between amounts required to be reported respectively by the taxpayer and [NAME OF THE NON-RESIDENT ENTITY] on those forms and the corresponding amounts reported by the taxpayer and [NAME OF THE NON-RESIDENT ENTITY] in their financial statements for that APA year;
- (4) a description of any material changes in financial or tax accounting methods or principles employed for that APA year in respect of the covered transactions that differ from the financial or tax accounting methods employed and reflected in the APA request, or if in the taxpayer's opinion, there were no such material changes, an affirmative statement to that effect;
- (5) a description of any failure to meet a critical assumption, and the reasons therefor or, if there have been no such failures, a statement to that effect, as well as a statement on the continuing relevance of the critical assumptions;
- (6) a statement identifying all material differences between the description of the taxpayer's business operations contained in the APA request and the taxpayer's business operations for that APA year, or if in the taxpayer's opinion there were no material differences, an affirmative statement to that effect;
- (7) all appropriate information and computations necessary to describe and support the application of the TPM to the covered transactions and the results for that APA year, demonstrating the compliance with the TPM;
- (8) an analysis and accounting of any compensating adjustments or subsequent compensating adjustments required under this APA, and the manner in which the related payments were, or will be, made; and
- (9) other items as may be appropriate to the particular circumstances of the taxpayer and [NAME OF THE NON-RESIDENT ENTITY].

The first annual report will also include a copy of the APA entered into between the [NAME OF THE FOREIGN TAX ADMINISTRATION] and [NAME OF THE NON-RESIDENT ENTITY].

In the event that one or more APA years have elapsed prior to the signing of this APA, the original and two copies of each annual report are to be filed with the Director General within [NUMBER] days from the date of the taxpayer's signature of this APA. The original and two copies of each annual report for other APA years are to be filed with the Director General and the [NAME OF THE FOREIGN TAX ADMINISTRATION] no later than [NUMBER] days after the end of the relevant APA year. Failure to comply with the annual report filing requirements, as set out above, may result in the cancellation of this APA.

Any clarification or additional information requested by the CCRA is to be supplied by the date specified or as extended by the CCRA.

## **8. APA AUDIT**

TSO audits with respect to the covered transactions of an APA year will generally be limited to verifying that:

- the terms and conditions of this APA have been complied with;
- material representations in the APA request, related submissions, and the annual reports remain valid and accurately describe the operations of the taxpayer and [NAME OF THE NON-RESIDENT ENTITY];
- the taxpayer applied the TPM consistently in accordance with the terms and conditions of this APA;
- supporting data and calculations used in applying the TPM were correct in all material respects; and
- the critical assumptions underlying this APA remain valid and relevant.

If a TSO determines that any matter outlined above has not been resolved, the TSO will consult with the Director General.

The TSO may, after appropriate consultation with the Director General, propose adjustments to give effect to this APA or propose usual and routine audit adjustments to the determination and computation of the taxpayer's income and transfer prices reported for the purposes of the covered transactions during the taxation year or years under audit as determined in accordance with this APA. Such proposed adjustments will not affect the continuing validity or applicability of this APA. If the taxpayer agrees with such proposed adjustments, they will be treated as subsequent compensating adjustments in accordance with section 10 of this APA. If the taxpayer does not agree with the proposed adjustments, the taxpayer may refer the matter to the Director General for resolution in accordance with section 11 of this APA.

## 9. RECORD RETENTION

In addition to its obligations under the *Act*, the taxpayer must maintain sufficient books, records, and other information to enable the CCRA to determine the extent of the taxpayer's compliance with this APA.

Information requested by a TSO during an APA audit must be made available to the TSO within [NUMBER] days of a written request. If additional time is needed, an appropriate extension of time may be granted by the CCRA upon written request within this [NUMBER]-day period.

Should the TSO's request involve materials that are not in the English or French language, the TSO may request a translation. The translation shall be provided to the TSO within [NUMBER] days of such request. An appropriate extension of time may be granted by the CCRA upon written request.

## 10. COMPENSATING ADJUSTMENTS

In the event that one or more APA years have elapsed and the appropriate Canadian federal income tax returns have been filed prior to the signing of this APA, amended Canadian federal income tax returns shall be filed, as necessary, within [NUMBER] days from the date of the taxpayer's signature of this APA reflecting the application of the TPM. Any resulting compensating adjustment required to bring the previously filed returns in agreement with the amounts determined by the application of the TPM for each APA year must be paid to the appropriate entity within this period.

For APA years that have not elapsed before the signing of this APA, to the extent that a compensating adjustment is necessary, the taxpayer or [NAME OF THE NON-RESIDENT ENTITY], as the case may be, shall pay the required compensating adjustment within one hundred and eighty (180) days from the end of the paying entity's taxation year to which the compensating adjustment relates.

A subsequent compensating adjustment may arise when, after the filing of a tax return for an APA year, the taxpayer or the CCRA makes usual and routine adjustments (e.g., correction of mathematical errors) to the determination and computation of the transfer prices for that APA year in accordance with this APA. Any subsequent compensating adjustments proposed by the CCRA and agreed to by the taxpayer must be paid within ninety (90) days from the date of the reassessment. When a subsequent compensating adjustment arises as a result of a proposal by the [NAME OF THE FOREIGN TAX ADMINISTRATION], the taxpayer will provide notice to the CCRA within ninety (90) days from the date of the proposal.

The taxable income of the taxpayer for an APA year will take into account all compensating adjustments and subsequent compensating adjustments, as computed in accordance with this APA, and will be used for all Canadian federal income tax purposes (including foreign tax credits and withholding taxes if the underlying nature of the adjustment requires these). A liability arising from a compensating adjustment or subsequent compensating adjustment will be deemed to accrue as of the last day of the APA year to which it relates, and will be taken into account for interest purposes and in the computation of any required tax instalments for that APA year or subsequent taxation years.

The taxpayer and [NAME OF THE NON-RESIDENT ENTITY] will settle compensating adjustments or subsequent compensating adjustments by [METHOD OF PAYMENT]. Payments of compensating adjustments or subsequent compensating adjustments are to be made in the currency in which payments between the taxpayer and [NAME OF THE NON-RESIDENT ENTITY] are made for the covered transactions.

## 11. DISPUTE RESOLUTION

Any dispute arising under this APA shall be resolved by the Director General who may, *inter alia*:

- have the TSO abide by the terms of this APA as interpreted by the Director General;
- revise this APA with the concurrence of the taxpayer;
- cancel this APA; or
- revoke this APA

in accordance with the relevant procedures set out in sections 13 through 15 of this APA.

Without limiting the generality of the foregoing, and by way of example only, disputes with respect to, *inter alia*, the interpretation of any term of this APA, whether a given transaction is a covered transaction, whether the taxpayer has complied with the record retention requirements, and whether the APA should be either revoked or cancelled are all disputes that shall be resolved as set out above by the Director General. The Director General's decision will be final. Nothing in this APA shall be read or construed as restricting the jurisdiction of the Tax Court of Canada under Part I, Division J of the *Act* should the taxpayer wish to appeal an assessment or reassessment for an APA year as if this APA had never existed.

## **12. USE, DISCLOSURE, AND PROTECTION OF INFORMATION**

APAs and the information that the CCRA obtains or generates during the APA process, including commercially sensitive and proprietary data is provided for the purposes of administering the *Act*. Consequently, the confidentiality provisions of the *Act* and the Convention limit the rights and powers of the CCRA to use and disclose information submitted in connection with an APA. Accordingly, the CCRA may employ information obtained or generated during the processing of this APA in reassessing taxation years not covered by this APA or for transactions not expressly included as part of the covered transactions under this APA.

Except as otherwise provided by written agreement, this APA may not be introduced by the Taxpayer or the CCRA as evidence in any administrative or judicial proceeding in relation to any taxation year, transaction, or person.

## **13. REVISION OF THIS APA**

This APA may be revised if it is established that:

- there has been a failure to meet a critical assumption;
- there has been a change in law or to the Convention that modifies the Canadian federal income tax treatment of any matter covered by this APA; or
- there has been a material change in circumstances, as established through the filing of annual reports or the audit by a TSO of any of the APA years, or any other means.

If the taxpayer believes that this APA requires revision, the taxpayer shall notify the Director General. The notice shall be filed promptly, specify the reason for the revision, and shall include supporting documentation.

The taxpayer and the Director General will discuss how this APA may be revised. If the Director General and the taxpayer agree on a revised advance pricing arrangement, the effective date of that arrangement will be stated in that advance pricing arrangement. If the parties fail to sign a revised advance pricing arrangement, the Director General may cancel this APA.

If the Director General and the taxpayer agree to revise this APA, the Canadian competent authority will seek concurrence for the revision from the [NAME OF THE FOREIGN COMPETENT AUTHORITY]. In the event that the [NAME OF THE FOREIGN COMPETENT AUTHORITY] does not agree on the revision, the Director General may:

- continue to apply this APA;
- apply the revised APA; or
- cancel this APA.

## **14. CANCELLATION OF THIS APA**

The Director General may cancel this APA, if it is established that:

- the taxpayer or [NAME OF THE NON-RESIDENT ENTITY] has made any material misrepresentation, mistake, or omission in the APA request or an annual report or renewal submissions with respect to this APA or in supplying, or failing to supply, any relevant information with respect to this APA;
- the taxpayer or [NAME OF THE NON-RESIDENT ENTITY] failed to comply with any material term or condition of this APA;
- there has been a failure to meet a critical assumption;
- there has been a change in law or to the Convention that modifies the Canadian federal income tax treatment of any matter covered by this APA; or
- there has been a failure to sign a revised APA.

If this APA is cancelled:

- the taxpayer will be provided with a written statement specifying the grounds for the cancellation;
- the [NAME OF THE FOREIGN COMPETENT AUTHORITY] will be informed;
- the cancellation usually will be effective as of the beginning of the taxation year which relates to the circumstances listed in the preceding paragraph;
- this APA will cease to be of any further force and effect with respect to the taxpayer and the Minister of National Revenue, as of the effective date of the cancellation; and
- after the effective date of the cancellation, the transactions previously covered by the APA will be subject to the provisions of the *Act* and the Convention.

## **15. REVOCATION OF THIS APA**

The Director General may revoke this APA if it is established that:

- the taxpayer or [NAME OF THE NON-RESIDENT ENTITY] has made any material misrepresentation that is attributable to neglect, carelessness, or willful default in the APA request, an annual report, or renewal submissions with respect to this APA or in supplying, or failing to supply, any relevant information with respect to this APA; or
- the taxpayer or [NAME OF THE NON-RESIDENT ENTITY] failed to comply with any material term or condition of this APA.

If this APA is revoked:

- the taxpayer will be provided with a written statement specifying the grounds for the revocation;
- the [NAME OF THE FOREIGN COMPETENT AUTHORITY] will be informed of such revocation;
- such revocation will be effective from the first day of the first APA year, and this APA will be of no force and effect with respect to the taxpayer and the Minister of National Revenue as though it had never been signed;
- the transactions previously covered by the APA will be subject to the provisions of the *Act* and the Convention.

## **16. CHANGE IN THE FOREIGN TAX ADMINISTRATION'S APA**

If the [NAME OF THE FOREIGN TAX ADMINISTRATION]'s APA is not consistent with this APA or has been revised, cancelled, or revoked, the taxpayer shall notify the Director General within [NUMBER] days of becoming aware of such inconsistency or action. After the Canadian competent authority consults with the [NAME OF THE FOREIGN COMPETENT AUTHORITY], the Director General may:

- continue to apply this APA;
- revise this APA with the concurrence of the taxpayer;
- cancel this APA; or
- revoke this APA.

## **17. RENEWAL**

Requests for renewal of this APA should be directed to the Director General and follow the form and procedures and comply with the requirements that apply to an initial request for an advance pricing arrangement that are in effect at the time the request for renewal is made.

## **18. CHANGE IN LAW OR TO THE CONVENTION**

If there is a change in law or to the Convention that modifies the Canadian federal income tax treatment of any matter covered by this APA, the new or amended law or the Convention will supersede this APA to the extent that it is inconsistent.

**19. NOTICE**

Any notices (or notifications) required by this APA shall be made in writing.

Notices to the Director General shall be addressed as follows:

Director General  
International Tax Directorate  
Canada Customs and Revenue Agency  
5th floor  
344 Slater Street  
Ottawa ON K1A 0L5  
CANADA

Attention: Director, Competent Authority Services Division

or to such other representative or address as specified by written notice to the taxpayer.

Notices to the taxpayer shall be addressed as follows:

[NAME OF THE CANADIAN TAXPAYER]  
Attention: [NAME OF APPROPRIATE OFFICER]  
[ADDRESS OF THE TAXPAYER]

or to such other representative or address as specified by written notice to the Director General.

**20. PENALTIES**

As long as this APA remains in effect and the taxpayer complies with the terms and conditions of this APA, no transfer pricing penalty under subsection 247(3) of the *Act* will be assessed with respect to the covered transactions.

**21. COUNTERPARTS**

This APA may be signed in counterparts, with each counterpart deemed an original.

**22. MISCELLANEOUS**

This APA constitutes the entire arrangement between the parties and, except as otherwise provided, no written or oral understandings or representations pre-dating the signing of this APA shall be of any effect. Except as otherwise provided, this APA may not be varied, amended, or supplemented except by written instrument signed by the parties.

IN WITNESS WHEREOF the parties have signed this APA on the dates indicated below.

**[NAME OF THE TAXPAYER]**

By:

\_\_\_\_\_  
Date

\_\_\_\_\_  
[NAME OF THE REPRESENTATIVE]  
[TITLE]

**THE MINISTER OF NATIONAL REVENUE**

By:

\_\_\_\_\_  
Date

\_\_\_\_\_  
[NAME OF THE OFFICIAL]  
Director General  
International Tax Directorate  
Canada Customs and Revenue Agency

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