

SP02/10 - Advance Pricing Agreements Annex 1 – Information to set out in the Formal Application

1. The application should fulfil the requirements of Section 223, TIOPA 2010 and set out:
 - a. the applicant’s understanding of the effect of the relevant legislation including the effect of any DTA in relation to the transfer pricing issues under consideration;
 - b. the areas where clarification of that effect is sought; and
 - c. a proposal for clarifying the effect of the legislation in accordance with the applicant’s understanding.

2. All proposals will also need to be supported by the following information:
 - a. the identification of the parties and their recent accounts (generally for the previous 3 years);
 - b. a description of the transfer pricing issues proposed to be covered in the APA (the “covered transactions”) and the proposed covered period including any rollback years. If applicable a brief explanation of why not all the transactions between the parties have been included in the APA request may be helpful.
 - c. an analysis of the functions, assets and risks of the parties and the wider context of the transactions i.e. the economically relevant characteristics including the global value chain, group characteristics and history
 - d. an analysis of the potential internal comparables available for any covered transaction.
 - e. a description of the method by which it is proposed to determine the transfer pricing issues in accordance with the arm’s length principle, and an analysis demonstrating how the application of that method satisfies the terms of the UK’s legislation, including the effect of any DTA, and is consistent with the OECD Transfer Pricing Guidelines.
 - f. actual and projected financial data of both the parties in relation to the issues detailing the actual and expected turnover, costs and profits from the covered transactions for the covered period. Wherever possible these should be, or supported by, projections and forecasts already prepared for commercial use by the business;
 - g. actual and projected financial data for the global value chain of the business relevant to the APA application. Again these should be, or supported by, the projections and forecasts prepared for commercial use by the business.
 - h. a description of the world-wide organisational structure, ownership, and business operations of the group to which the company in question belongs, the place or places where such operations are conducted, and all the major categories of transaction flows of the parties to whom the APA is intended to apply;
 - i. a description of the records which will be maintained to support the transfer pricing method proposed for adoption in the APA and the

- information which it is proposed will be supplied each year to demonstrate that the tax return conforms to the terms of the APA;
- j. a description of any current tax enquiries or competent authority claims that are directly or indirectly relevant to the issues covered by the proposed APA together with current rulings issued by a foreign tax authority to one of the proposed parties;
 - k. the identification of assumptions made in developing the proposed transfer pricing method which are critical¹ to the reliability of its application under the arm's length standard (the proposed "critical assumptions");
 - l. an analysis of the Diverted Profits Tax position in respect of the covered transactions² and any transactions directly connected to them. The form and extent of this analysis will be determined by the nature of the transactions covered and how clear the position is;
 - m. current or expired rulings issued by a foreign tax authority covering intercompany transactions or business activities of members of the group that are similar to the proposed covered issue(s) or relate to one of the proposed parties; and
 - n. any additional material that the applicant believes is important to facilitate HMRC's evaluation of the request

¹ The method should be sufficiently robust to accommodate some changes in the commercial and economic climate from that reasonably foreseeable when the proposals were made and still be capable of replicating an arm's length outcome. However, the accuracy of the method is likely to be predicated on assumptions in respect of particular factors fundamental to its application, such as the continuing nature of the functions performed, accounting policies and practices, the applicable law and guidelines, the terms of contractual agreements impacting upon the covered transactions, or levels of market share. Critical assumptions are designed to protect HMRC and their treaty partners from the risk that the agreement may become inappropriate, but they should not be so tightly drawn that the certainty provided by the agreement is likely to be jeopardised. Setting parameters for acceptable divergence for some assumptions can help to retain flexibility. Where there is a change, or a change greater than any relevant parameters set, to circumstances that both parties have identified as critical to the agreement, a reconsideration of the agreement is then activated and may lead to its cancellation or modification depending on the terms of the agreement.

² Although APAs do not extend to DPT and do not mean that a DPT notice will not be issued by HMRC it is anticipated that the potential for a DPT charge in relation to the covered transactions will be considered in assessing the APA application.