

Section 482 — Allocations Between Related Parties

Announcement 96-124

In Announcement 95-49, 1995-24 I.R.B. 13, the Service provided, for public comment, a draft revision of Rev. Proc. 91-22, 1991-1 C.B. 526, which sets forth procedural rules for the Advance Pricing Agreement (“APA”) Program. The Service received several comments on Announcement 95-49 and is issuing revised procedural rules in Rev. Proc. 96-53 at page 9, this Bulletin.

The most significant changes to the draft revenue procedure in Announcement 95-49 are as follows (with section references to Rev. Proc. 96-53):

Sec. 3.06

Often, APA negotiations are used to find a basis for resolving transfer pricing issues in years prior to the initial year of the APA’s term (“rollback” of the APA). In response to comments, the new revenue procedure indicates that the taxpayer has the option whether or not to request a rollback of the APA methodology. Taxpayers should, of course, recognize that, even absent formal negotiations for a rollback, the Service may determine under regularly applicable procedures that the methodology used to resolve an APA request also is appropriate for prior taxable years.

Sec. 3.07

In response to questions that sometimes arise in APA negotiations, section 3.07 clarifies that the initiation of an APA request does not put into abeyance pending examinations or other proceedings. Section 3.07 also instructs Service personnel, wherever feasible, to coordinate the consideration of APA requests with pending related proceedings, so as to enhance the efficiency of Service operations and reduce overall taxpayer compliance burdens.

Sec. 3.09

Section 3.09 emphasizes the Service's willingness to adapt APA procedures to the needs of particular taxpayers and situations, and especially to the special needs of small business taxpayers.

Sec. 5.09

The draft revenue procedure in Announcement 95-49 provided that an APA request would be considered filed on the date the user fee was paid, provided that a substantially complete request is filed within 120 days thereafter. In response to comments, section 5.09 provides that the Service may extend the 120-day period based on a showing of substantial unforeseen circumstances.

Sec. 5.13

New mailing and delivery instructions are provided to reflect current addresses and Service procedures for handling user fees.

Sec. 5.14

Section 5.14 makes technical corrections to the user fee rules for APAs contained in Rev. Proc. 96-1, 1996-1 I.R.B. 8. In addition, section 5.14 provides guidelines for determining whether an APA submission consists of a single or multiple requests for purposes of the user fee rules. The revenue procedure also provides special lower fees for certain specified categories of requests, including certain smaller transactions, routine renewals where material facts and issues have not changed, and multilateral requests where the facts and issues are essentially similar with respect to each foreign jurisdiction. As a matter of clarification, the provision of the reduced fee for certain multilateral APA requests should not be read to imply that user fees are charged with respect to a taxpayer's request for competent authority relief; rather, the fees are charged with respect to the Service's analysis and consideration of the APA requests.

Sec. 6.04

In response to comments, section 6.04 provides that, wherever reasonably feasible, if a prefiling conference has been held with the taxpayer, the Service's Team Leader for considering the request will be appointed from among the IRS representatives at the prefiling conference.

Sec. 6.05(4)

In response to comments, the revenue procedure modifies and clarifies procedures to be followed when the Service or taxpayer fail to conform to a Case Plan and Schedule.

Sec. 6.05(5)

In response to comments, section 6.05(5) enables the Service and taxpayer APA Teams to modify the Case Plan and Schedule by mutual agreement, without prior approval of the APA Director, provided that progress is maintained toward completion of the case as expeditiously as is feasible.

Sec. 6.05(6)

In response to comments, section 6.05(6) gives the Service and taxpayer APA Teams additional flexibility concerning how to document the progress of pending negotiations.

Secs. 6.06 & 6.07

These portions of the revenue procedure discuss the circumstances under which user fees will be returned if the taxpayer withdraws, or the Service rejects, an APA request. In general, user fees will not be returned if a request is withdrawn or rejected; however, the user fee may be returned in the case of a rejection if the Service determines return of the fee to be appropriate.

Sec. 7.01

Section 7.01 contains changes designed to reflect the increasing coordination between treaty partners in the evaluation of bilateral and multilateral APA requests, including consultation at the earliest stages of APA proceedings.

Sec. 7.08

Section 7.05 of Rev. Proc. 96-13, 1996-3 I.R.B. 31, provides in part that, if a taxpayer reaches a settlement on an issue with Counsel pursuant to a written agreement, the U.S. competent authority will endeavor only to obtain a correlative adjustment from a treaty country and will not undertake any actions that would otherwise change such agreements. This provision has caused taxpayers to ask whether the position of Rev. Proc. 91-22, to the effect that by obtaining a unilateral APA a taxpayer does not limit its access to treaty relief,

remains in effect. Section 7.08 of the new revenue procedure clarifies the interaction between a unilateral APA and the taxpayer's attempts to obtain treaty relief through the competent authority process. In general, the U.S. competent authority will endeavor to reach agreement with a treaty partner to provide relief from double taxation. However, a unilateral APA may hinder the ability of the U.S. competent authority to reach a mutual agreement which will provide relief from double taxation, particularly when a contemporaneous bilateral or multilateral APA request would have been both effective and practical (within the meaning of § 1.901-2(e)(5)(i)) to obtain consistent treatment of the APA matters in a treaty country.

Sec. 8

Section 8 of Rev. Proc. 96-53 provides new rules clarifying the treatment of APA rollback requests, and coordinating APA rollback procedures with procedures for accelerated competent authority resolution and simultaneous Appeals and competent authority consideration. Such coordination would be necessary in the case of "gap years," i.e., tax years for which returns have been filed that are not covered by the APA request but that are not yet under audit.

Sec. 11.02

Rev. Proc. 96-53, like Rev. Proc. 91-22, provides that in certain circumstances taxpayers may make compensating adjustments, after the end of a taxable year, in order to achieve compliance with an APA. In general, the obligation to make such compensating adjustments does not affect the taxpayer's estimated tax liability, and does not result in other specified consequences, for the taxable year. Section 11.02 of the revenue procedure clarifies that this favorable treatment is available only when the taxpayer has made a good-faith effort to comply with the terms of the APA. In addition, the revenue procedure provides that the special treatment of compensating adjustments applies to compensating adjustments directly related to the taxpayer's application of the TPM, but not to "subsequent compensating adjustments," which are subject to normal procedures for assessment, collection and refund.

Sec. 11.08

Commentators have asked for clarification concerning the type of review the Service will apply to requests for renewal of APAs. In general, the Service will seek to minimize the amount of new information and analysis that taxpayers need to supply in connection

with renewal requests, and to the extent consistent with applicable law and policies, will seek to maintain continuity between original APAs and renewals.

The Service desires to receive comments at any time concerning how APA procedures might be revised in the future to enhance the value of the APA

Program to taxpayers and to the Service. Such comments should be sent to:
Advance Pricing Agreement Program
Internal Revenue Service
Attn: CC:INTL
Room 3501, 1111 Constitution Ave.,
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Washington, DC 20024
