



AUSTRALIAN TRANSFER PRICING ALERT

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ADVANCE PRICING ARRANGEMENTS (APA)

► **THE REVISED APA POLICIES AND PROCEDURES REITERATE THE ATO'S MESSAGE THAT APAS ARE AN IMPORTANT MECHANISM FOR MULTINATIONAL GROUPS TO MITIGATE AND MANAGE THEIR TRANSFER PRICING RISKS IN A CO-OPERATIVE ENVIRONMENT, WITH THE ATO AND, IN SOME CASES, OVERSEAS TAX AUTHORITIES TO PROVIDE INCREASED TAX CERTAINTY**

In summary, Practice Statement Law Administration (PSLA) 2015/4 outlines the following:

- Mutual expectations between the ATO and taxpayers applying for an APA
- Factors that affect the likelihood/non-likelihood of acceptance into the APA program
- Consideration of the application of anti-avoidance provisions in the case of a transfer pricing benefit in regards to cross-border dealings
- Description on what to expect during various stages of the APA process
- Collateral issues
- Roles of ATO officers involved during the APA process
- Explanation of the interaction between APAs and ATO audits
- Processes relating to APA renewals
- Utilisation of independent experts – when and why
- Situations where the ATO has the power to revise or cancel an APA
- The authority for entering into an APA.

Acceptance into the APA program

The ATO wants to see that:

- The transfer pricing methodology proposed in the application best achieves consistency with the Organisation for Economic Co-operation and Development (OECD) guidelines
- The cross border conditions (actual conditions) between the related entities are unlikely to change significantly throughout the period of the APA
- A proposed arrangement is under serious contemplation and the proposed actual conditions are unlikely to change significantly throughout the period of the APA
- The transfer pricing issues are complex and there is uncertainty around the application of transfer pricing rules
- The probability of economic double taxation is high if there was no APA in place.

SPECIALITY

Transfer Pricing

CONTACT

ZARA RITCHIE

Lead Partner, Transfer Pricing
Tel: +61 3 9605 8019
zara.ritchie@bdo.com.au

ANTHONY HAYLEY

Associate Director, Transfer Pricing,
Brisbane
Tel: +61 7 3173 5412
anthony.hayley@bdo.com.au

NICK DRIZEN

Principal, Transfer Pricing, Perth
Tel: +61 8 6382 4661
nick.drizen@bdo.com.au

How has the ATO process changed?

There are some key changes that have been made to the APA process. The ATO has now introduced a formal APA Program Management Unit, referred to as an ATO Triage function, and more transparent insights into the factors impacting taxpayer's chances in entering into the APA program. The Practice Statement also emphasises that the ATO APA teams will be moving towards applying a 'whole of tax code' approach in reviewing APA applications as opposed to focusing solely on direct transfer pricing issues. For example, matters dealing with withholding tax and carry forward losses would be considered as part of the APA application.

What are the important messages?

In most cases, the work required before being accepted into the APA Program has increased. PSLA 2014/5 indicates that the ATO continues to encourage and support taxpayers into entering into APAs where possible. However, simultaneously, the ATO emphasises that going forward, a greater level of due diligence will be applied which will be more apparent at the early engagement stage.

With the new PSLA, there is an expectation that there will be more upfront work required before being accepted into the APA program. Therefore, companies who have previously concluded an APA under the old regime, may find that additional work needs to be undertaken before they apply for a renewal of their APA under PSLA 2015/4.

Are APAs still a valuable tool to manage risk?

We are able to assist MNCs to get ahead of the curve ball and in minimising transfer pricing risks and surprises. We will work collaboratively with clients to determine whether entering into an APA is the right avenue or whether an alternative approach is better suited. Our transfer pricing team has extensive experience in successfully negotiating APAs, resolving disputes and maintaining good working relationships with the ATO.

[Practice Statement Law Administration 2015/4](#)

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