

IRS TO MAKE ADVANCE PRICING AGREEMENTS PUBLIC

WASHINGTON -- The Internal Revenue Service plans to make public copies of Advance Pricing Agreements (APAs), but only after removing certain details such as the taxpayer's identity, trade secrets, and confidential commercial or financial information. In the case of bilateral and multilateral APAs, information protected by the non-disclosure provisions of the relevant tax treaty would also be removed.

An APA deals with the method for determining whether transfer prices between a U.S. company and its foreign affiliate are in accord with Internal Revenue Code (IRC) section 482. It may also involve a foreign tax authority when the affiliate operates in a country with which the United States has a tax treaty.

Litigation over the disclosure of APAs has been pending since 1996, when The Bureau of National Affairs, Inc., brought an action seeking the public disclosure of all completed APAs. The issue in the litigation is whether the entire APA is subject to the confidentiality provisions of IRC section 6103, or whether APAs should be made public, either under the Freedom of Information Act or as a written determination under IRC section 6110.

In a document to be filed today with the U.S. District Court for the District of Columbia, the IRS agrees that APAs fall under the disclosure provisions of IRC section 6110. For both future APAs and all those completed since the program began in 1991, the IRS plans to use a redaction process under IRC section 6110 similar to the one it uses for private letter rulings. Such a redaction process will allow the taxpayer involved in the APA to have an opportunity to participate in redacting the document to help the IRS ensure that the taxpayer's identity is protected and that sensitive, proprietary information is removed before the APA is publicly disclosed. In addition, if the redactions are challenged, IRC section 6110 would allow the taxpayer to participate directly in the defense of the redactions in court.

The IRS believes releasing APAs under IRC section 6110 will fully protect the confidentiality interests of those directly involved in the APAs, while helping taxpayers better understand the issues involved in APAs and increasing public confidence in the fairness of the tax system as a whole.

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