

APMA
REQUESTS FOR APA PRE-FILING CONFERENCES OR CONSULTATIONS

Advance Pricing Agreement (“APA”) pre-filing conferences provide taxpayers with a forum to receive the Advance Pricing and Mutual Agreement Program’s (“APMA’s”) preliminary views and guidance on potential APAs and APA-related issues. Pre-filing conferences are intended to lead to a more productive and efficient APA process for APMA and taxpayers who participate in them and subsequently elect to file an APA request. Therefore, taxpayers are invited, and in some cases required, to meet with the APMA in a pre-filing conference prior to filing an APA request. Pre-filing requirements are found in sections 3.02(3) through 3.02(7) of Revenue Procedure 2015-41. (All references to sections herein pertain to Revenue Procedure 2015-41, 2015-35 I.R.B. 263.) APMA is also available for informal consultations with taxpayers within or outside of the APA process. See section 2.03(5). Pre-filing conferences for cases exclusively involving Revenue Procedure 2015-40 are discussed in another document.

PRE-FILING CONFERENCES PURSUANT TO A MANDATORY PRE-FILING MEMORANDUM

Taxpayers must file a pre-filing memorandum prior to filing an APA request if any of the conditions in section 3.02(4) apply. Within the submitted mandatory pre-filing memorandum, taxpayers must indicate if they wish to have a pre-filing conference. Taxpayers who do not wish to have a pre-filing conference may nonetheless be required to participate in one as a precondition to filing an APA request, if APMA deems a pre-filing conference in the best interest of effective and efficient tax administration.

Taxpayers may request an optional pre-filing conference prior to filing an APA request. In addition, taxpayers may request an optional pre-filing conference prior to filing a mandatory pre-filing memorandum. Taxpayers attending an optional pre-filing conference who subsequently file a mandatory pre-filing memorandum may be required to participate in another pre-filing conference. See the paragraph immediately above. Only optional pre-filing conferences may be held on an anonymous basis. Taxpayers requesting an optional pre-filing conference are required to file a pre-filing memorandum pursuant to section 3.02(5).

CONTENTS OF PRE-FILING MEMORANDA

A mandatory pre-filing memorandum must identify the reason(s) it is required to file a memorandum and the memorandum must have a length and content appropriate to the size and complexity of the covered issue(s) proposed by the taxpayer, and must be primarily in memorandum form but may be accompanied by diagrams, slides, spreadsheets, and similar supporting materials. An optional pre-filing memorandum must have a length and content appropriate to the substantive or procedural issues the taxpayer wishes to raise with APMA, and may be in a format chosen by the taxpayer.

Whether mandatory or optional, a pre-filing memorandum must also do the following:

- (a) State taxpayer’s name and EIN, unless taxpayer makes a valid request for an anonymous pre-filing conference;

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- (b) State that the taxpayer seeks a pre-filing conference and the issues the taxpayer wishes to discuss;
- (c) Propose at least three possible dates for a pre-filing conference at least two weeks after the date that the pre-filing memorandum is submitted;
- (d) Include covered issue diagrams if the pre-filing memorandum is mandatory;
- (e) If mandatory and a taxpayer requests a unilateral APA to cover any issue that could be covered under a bilateral or multilateral APA under the applicable tax treaty(ies), the taxpayer must explain why it believes that a unilateral APA is appropriate to cover that issue;
- (f) If mandatory and if submitted pursuant to sections 3.02(4)(b) and 3.04(2)(a) to seek permission to file an abbreviated APA request, must (i) specify any information, documents, or other materials the taxpayer proposes to omit from its APA request, (ii) present the taxpayer's arguments that the information, documents, or other materials the taxpayer proposes to omit from its APA request are not necessary for APMA's evaluation of the APA request, including if applicable the taxpayer's arguments that the applicable law, facts and circumstances, economic conditions, proposed covered issue(s) and method(s), and other factors relevant to the proposed APA years are substantially the same as those relevant to the current APA or the competent authority resolution as the case may be (see sections 5.01 and 8), and (iii) in the case of a proposed renewal APA, summarize in a table the results and adjustments under the current APA, in absolute and percentage terms (e.g., operating margin), with comparison to any arm's length points or ranges specified in the APA, and also summarize any proposed changes in terms from the current APA;
- (g) List the name and contact information for the taxpayer's point of contact and, unless the pre-filing memorandum is submitted on an anonymous basis, provide, as necessary, a Form 2848 authorizing the point of contact to represent the taxpayer in connection with the APA request or a Form 8821 authorizing the point of contact to inspect or receive confidential tax information about the taxpayer in connection with the APA request; and
- (h) Identify all open back years of the taxpayer and which of such years, if any, are under examination by the IRS and the names of IRS employees involved in the examination.

APMA also requests the following additional information be provided on the first page of the request:

- (a) State if taxpayer is considering a unilateral, bilateral, or multilateral APA request;
- (b) The foreign country or countries implicated by the APA request;
- (c) The names of (i) Team Leaders, (ii) Economists, and (iii)

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Managers who participated in an immediately prior APA request and all ongoing APA requests;

- (d) Years involved;
- (e) Transaction amount(s);
- (f) Taxpayer's city and state; and
- (g) Meeting length requested.

INFORMAL CONSULTATIONS

Informal consultations may address the APA process in general or potential covered issues in particular. They may be conducted by telephone, in writing, and/or in person and may be obtained without prior submission of memoranda or other documentation. Taxpayers are encouraged to provide sufficient information to make an informal consultation meaningful. Taxpayers are therefore encouraged to review the contents of a pre-filing conference for ideas about information that may be helpful to present to APMA.

PLACE FOR SUBMISSION OF PRE-FILING MEMORANDUM OR WRITTEN CONSULTATION REQUEST

Two printed copies and one electronic copy of the pre-filing memorandum or written consultation request must be submitted to APMA at the following address:

Deputy Commissioner (International)
Large Business and International Division
Internal Revenue Service
1111 Constitution Avenue, N.W.
SE:LB:IN:TPO:APMA:M3-370
Washington, D.C. 20224
(Attention: APMA)

The electronic copy of the pre-filing memorandum must follow the rules for media and format of electronic submissions described in section 2 of the Appendix.

Alternatively, in lieu of the forgoing, the pre-file memorandum and any accompanying documentation may be provided entirely electronically by email sent to Heather Snodgrass (Heather.L.Snodgrass@irs.gov).

ACTIONS TAKEN WITH RESPECT TO PRE-FILING CONFERENCES AND MEMORANDA

APMA will notify the taxpayer whether it will accept or decline the taxpayer's request to hold a pre-filing conference. If APMA decides to hold a pre-filing conference, the conference will address procedural and substantive issues pertinent to the APA request. During the conference, the taxpayer should be prepared to discuss the relevant facts and circumstances surrounding the issue(s), method(s), and terms and conditions it

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proposes to cover in the APA, and (if applicable) the taxpayer's justification for its request to file an abbreviated APA request. If APMA decides against holding a pre-filing conference, it will direct the taxpayer to proceed with its APA request (see section 3.04(2) regarding the situation in which the taxpayer has sought permission to file an abbreviated APA request).

Unless the taxpayer has submitted a mandatory pre-filing memorandum pursuant to section 3.02(4), which requires identification of the taxpayer, or has otherwise identified the taxpayer, a pre-filing conference may be held on an anonymous basis. APMA generally recommends, however, that pre-filing conferences be held on a named basis to facilitate a more informed discussion of procedural and substantive issues that may arise during the APA process.

The APA process is intended to address issues that are ongoing in nature or have already arisen (or, based on firm commitments, are expected to arise). Conversely, the APA process is not available for addressing hypothetical or merely contemplated issues. In particular, the taxpayer will not be permitted to use the APA process to obtain an advance view of the IRS's likely treatment of particular transactions (for example, business restructurings or intangible development arrangements) the taxpayer may be considering.

INFORMAL ADVICE IN PRE-FILING CONFERENCE AND INFORMAL CONSULTATIONS

Statements or representations made by APMA in pre-filing conferences and informal consultations are informal and are, therefore, not binding on the IRS.

APMA CONTACTS

Once a request for a conference has been received, it will be reviewed and added to the next scheduled intake meeting where it will be assigned to an APMA Group and then to an APMA Team Leader. You will be contacted by the assigned Team Leader to discuss scheduling the conference.

If you have any questions prior to a Team Leader being assigned, please contact Heather Snodgrass. Her email address is provided above.