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ADVANCE PRICING ARRANGEMENT GUIDELINES

INLAND REVENUE BOARD OF MALAYSIA ADVANCE PRICING ARRANGEMENT GUIDELINES
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PART I

PRELIMINARY

1. INTRODUCTION

An Advance Pricing Arrangement (hereinafter referred to as “APA”) represents an arrangement between a taxpayer and the Director General of Inland Revenue (“DGIR”) or between Competent Authorities (“CAs”) that establishes the transfer pricing methodology (“TPM”) to determine the prospective arm’s length transfer prices of specified related party transactions between the taxpayer and its foreign affiliates over a defined period, subject to specified terms and conditions.

An APA determines the appropriate TPM to ensure that the prices of specific cross-border transactions are at arm’s length in future income apportionment or allocation.

2. PURPOSE OF THE GUIDELINES

The Advance Pricing Arrangement Guidelines (hereinafter referred to as “the Guidelines”) explains the manner in which a taxpayer may apply for an APA to the DGIR/CA, and the manner in which such an application will be processed and administered. The Guidelines is to explain procedural and administrative requirements of Section 138C of the Income Tax Act 1967 (hereinafter referred to as “the Act”) and the Income Tax (Advance Pricing Arrangement) Rules 2023.

3. BENEFITS OF SEEKING AN APA

APA addresses future transactions; therefore, a taxpayer stands to benefit from an APA as follows:

3.1 Provides certainty on the appropriate TPM to be applied in pricing a covered transaction(s), thus enhancing the certainty of tax treatment on cross-border transactions;

3.2 In case of bilateral or multilateral APA, it avoids and eliminates potential double taxation by ensuring that all profits are correctly allocated and taxed;

3.3 Alleviates costly and time-consuming examination of transfer pricing issues in the event of an audit, and lessens the possibility of protracted and expensive litigation;

3.4 Places the taxpayer in a better position to predict costs and expenses, including tax liabilities; and

3.5 Reduces record keeping burden as the taxpayer will know in advance the required documentation to be kept to substantiate the agreed TPM.

4. TYPES OF APA

4.1. There are three types of APA, namely Unilateral APA ("UAPA"), Bilateral APA ("BAPA") and Multilateral APA ("MAPA"). Unilateral APA is a binding agreement between a taxpayer and the DGIR which is referred to Section 138C (1)(a) of the Act. Whereas, BAPA and MAPA are arrangements under Section 132 of the Act that concluded between Competent Authorities ("CAs") of two or more governments.

4.2. The parties to the APA are as follows:

(a) Unilateral APA is between the taxpayer and the DGIR; and

(b) BAPA is between the Malaysian CA and the CA of another country;

(c) MAPA is between the Malaysian CA and the CAs of another countries.

An APA is binding on all parties related to the APA, subject to any qualifications stated in the APA.

4.3. A CA is appointed by the Minister of Finance or his authorized representative. The list of the CAs of Malaysia can be accessed at http://www.hasil.gov.my via the *International tab → Advance Pricing Arrangement → Contact Details of Competent Authorities for APA Application.*

PART II

RELEVANT PROVISIONS

5. RELEVANT PROVISIONS

Specific provisions have been introduced in the Act to address the implementation of APA:

5.1. Section 138C allows a taxpayer who carries out a cross-border transaction with an associated person to apply for an APA. This section further provides for the use of prescribed forms when making the application i.e. Form APA 1 for Unilateral APA and Form APA 2 for BAPA/MAPA.

5.2. Section 132 is applicable for BAPA or MAPA, which involve CAs of relevant tax treaty partner of one country or more countries.

5.3. Paragraph 154(1)*(eb)* empowers the Minister of Finance to provide for the scope and procedure relating to APA by way of the Income Tax (Advance Pricing Arrangement) Rules 2023 [*P.U. (A) 166/2023*] (hereinafter referred to as “the APA Rules”).

5.4. Paragraph 154(1)*(ec)* empowers the Minister of Finance to provide for the fee relating to APA by way of the APA Rules which prescribes the fee with respect to the application and renewal of APAs and any expenses incurred as determined by DGIR. Such expenses may include accommodation, travelling, meal allowance etc. incurred during the processing of APA application or renewal.

5.5. Section 140A and relevant rules and guidelines in implementing and facilitating the operation of Section 140A are to be referred to in ascertaining the arm's length transfer price in respect of an APA.

PART III

ADMINISTRATION AND PROCEDURES

6. WHO MAY APPLY FOR AN APA

6.1. An APA may be requested by any:

(a) taxpayer who is a company assessable and chargeable under the Act and carries on cross-border transaction(s) with an associated person; or

(b) permanent establishment ("PE") which the arrangement is made under Section 132 of the Act and will be subjected to the applicable tax treaty.

6.2. Only taxpayer with cross-border transaction(s) with an associated person from non-treaty countries can apply for unilateral APA. Cross-border transactions with an associated person from treaty countries shall apply for BAPA or MAPA.

6.3. A PE may only apply for a BAPA and the request shall be made by its head office on behalf of the PE.

6.4. In order to ensure efficient use of resources, an application for APA will only be considered for cases under the following circumstances:

(a) Revenue in relation to business operation of covered transactions exceeding RM100 millions of its taxable business income; and

(b) Value of the proposed covered transaction is:

(i) for sales, if it exceeds 50% of the revenue;

(ii) for purchases, if it exceeds 50% of total purchases; or

(iii) for other transactions, if the total value exceeds RM25 million.

(c) In cases involving financial assistance, the threshold is provided under the relevant paragraph of the IRBM Transfer Pricing Guidelines in force.

(d) All covered transactions must relate to income that is chargeable and not income which is exempted under the Promotion of Investments Act 1986 [Act 327] and the Income Tax Act 1967 [Act 53], including income which is exempted in a treaty partner country. Separate accounts must be maintained for the exempt and non-exempt transactions for the purpose of an APA.

(e) A taxpayer who is undergoing an audit or investigation is not allowed to apply for an APA until the audit or investigation has been settled or relevant appeals to the Special Commissioners or court has been decided.

(f) A taxpayer:

   (i) who has just commenced business in Malaysia, has to be in operation for not less than thirty-six months; or

   (ii) whose business activities in relation to the covered transactions has been in operation for no less than twelve months for businesses in operation for more than 36 months.

(g) For taxpayer whose functions, assets and risks (FAR) and business model remain the same, the proposed benchmarking analysis should not result in a reduction in operating margin that is more than 3% of the average weighted margin:

   (i) for the last five years in the case of existing business; or

   (ii) at least three years for cases mentioned in sub-paragraph 6.4 (f).

(h) If there is a change in FAR, a reduction of equal to or more than 5% reduction in operating margin may not be acceptable if there is no transfer of intangible properties or major shift in FAR or transfer of significant people functions. Justification and supporting evidence for the change in FAR including transfer of significant people functions must be submitted during application.

7. APA PROCESS

7.1. A taxpayer who enters into an APA is subject to the following procedures involving the following stages:

(a) pre-filing meeting;

(b) submission of formal application;

(c) reviewing and negotiating the application;

(d) implementation of the APA; and

(e) APA monitoring and compliance review.

7.2. In processing an APA application, the DGIR may propose alternative methodologies, restrict or expand the scope of the proposed APA or decline the application.

7.3. At any point of time during the processing of an APA application, a taxpayer is required to inform the DGIR of any occurrence such as voluntary disclosure, investigation, audit, incentive approval, and any other relevant facts that may affect the outcome of the application.

8. APPLICATION FOR BAPA/MAPA

8.1. A taxpayer who carries on a cross-border transaction with an associated person from a country having an arrangement made under section 132 of the Act, shall only apply for a BAPA/MAPA. Such bilateral arrangement offers assurance that the method for dealing with the transfer pricing issues covered in the APA will be accepted by the competent authorities of both countries, thus avoiding potential double taxation.

8.2. If an agreement fails to be reached in a BAPA, the taxpayer does not have the option to convert its bilateral application into a unilateral application.

8.3. In the case of MAPA, if negotiations with any one of the CAs fails, the taxpayer may choose to continue for a BAPA or MAPA with the rest of the remaining countries.

9. PRE-FILING MEETING

9.1. A taxpayer is required to make **a written request** to the Department of International Taxation (DIT) of IRBM for **a pre-filing meeting**. This request must be made at least twelve (12) months prior to the first day of the proposed covered period.

9.2. Prior to written request for a pre-filing meeting, taxpayers are requested to have a preliminary discussion with Inland Revenue Board Malaysia ("IRBM") to provide the DGIR an overview of the case and to determine the eligibility to proceed to the pre-filing stage. This will help to minimize the cost and resources incurred by the applicant as the documentations required during this stage are minimal. The preliminary discussion can help taxpayer in the preparation of the pre-filing meeting.

9.3. The permissible period for preliminary discussion is at least three (3) months from the date of making a request in writing to the DGIR for a pre-filing meeting. A taxpayer will be considered as having no genuine interest in applying APA if there is no response provided to the necessities of the preliminary discussion within that period. Issues to be discussed at this stage include:

(a) letter of engagement which authorise the tax agent or other tax representative to act on behalf of the taxpayer;

(b) details of controlled transactions consisting of the nature of transactions, quantum and percentage, entities involved and their location;

(c) details of covered transactions and whether these transactions relate to income exempted in Malaysia and the treaty partner countries;

(d) the period covered by the APA;

(e) the proposed rollback year(s);

(f) the proposed TPM;

(g) the expected return for the covered transaction as mentioned in above sub-paragraph 6.4 (g) or (h);

(h) the possible costs involved; and

(i) other relevant information.

9.4. The written request for a pre-filing meeting must be supplemented with information as follows:

(a) Transfer Pricing Documentation as outlined in the IRBM's Transfer Pricing Guidelines in force;

(b) names, addresses and tax file references of the taxpayer or all parties to the proposed APA (both in Malaysia and outside Malaysia);

(c) proposed covered transaction;

(d) period to be covered by the APA;

(e) the proposed TPM and an explanation of whether the method accords with the arm's length principle;

(f) a description of the critical assumptions under which the proposed TPM and analysis relating to the critical assumption will operate and the events that should be taken into account when considering the said assumption;

(g) financial statements and tax computations that are available at least for the latest three years prior to the application;

(h) a written indication whether the income in relation to the covered transactions is tax-exempted by the other CA;

(i) name, telephone number and email of the contact person of the company; and

(j) any other necessary information.

9.5. The purpose of a pre-filing meeting is to ascertain the merits of the APA application. Depending on the complexity of the application, pre-filing meeting may be carried out over several sessions in order for DGIR to obtain sufficient information to identify critical and relevant area of focus for the APA application.

9.6. The taxpayer shall be notified of the outcome of the pre-filing meetings within 14 days from the last pre-filing meeting. If it is decided that the case has merits for an APA, the taxpayer may submit a formal application for an APA as described under paragraph 10 of the Guidelines.

9.7. For BAPA/MAPA, taxpayer is to ensure the same set of documents/ information are provided simultaneously to all the relevant CAs.

10. SUBMISSION OF FORMAL APPLICATION

10.1. A formal application for an APA must be submitted using Form APA 1 for Unilateral APA or Form APA 2 for BAPA or MAPA, within six months after receipt of notification from DGIR pursuant to outcome of the pre-filing meeting together with an applicable APA fee mentioned in paragraph 28 of the Guidelines.

10.2. If the formal APA application is not submitted after six months, the formal application shall be deemed to have been withdrawn by the taxpayer and a new written request must be filed afresh.

10.3. The prescribed form can be downloaded from the IRBM website at http://www.hasil.gov.my/.

10.4. A completed prescribed form as specified by the Act must be signed by the applicant of the APA.

10.5. All applications should be addressed to:

Department of International Taxation
Inland Revenue Board of Malaysia Headquarters
Level 12, Menara Hasil
Persiaran Rimba Permai
Cyber 8, 63000
Cyberjaya Selangor

10.6. All documents submitted for an APA application must be in English or Bahasa Malaysia. If documents are in a language other than English or Bahasa Malaysia, a translated version in the English or Bahasa Malaysia language must be submitted together with the primary documents.

11. REVIEWING AN APPLICATION

11.1. In general, the process of reviewing an APA application will include, but not limited to:

(a) request further information to review and evaluate the taxpayer's proposal;

(b) site visits, in order to gain a better understanding of the business and the related industry, to clarify issues and to gather more information;

(c) meetings with all parties involved to understand the facts and circumstances underlying the APA application; and

(d) engage of necessary experts.

11.2. Upon completion of the reviewing process, the DGIR will determine the initial position on the APA application.

12. OPINION BY AN INDEPENDENT EXPERT

12.1. Where at any stage of the APA process that the opinion by an independent expert may be necessary for the application of an APA, the taxpayer may engage the expert at the cost and expense of the taxpayer.

12.2. The opinion of this independent expert shall not be binding on the taxpayer, the DGIR or the CA. The independent expert will be subject to the secrecy provisions of the Act.

13. DECLINING AN APPLICATION

13.1. In the course of reviewing an application, the DGIR may decline the application if it is found to be inappropriate under any of the following circumstances:

(a) failure to comply with the requirements under the Income Tax (Transfer Pricing) Rules and the IRBM Transfer Pricing Guidelines in force;

(b) the covered transaction is based on a hypothetical situation or not seriously contemplated, such as applying for an APA on a non-existent transaction, or any transaction which is about to be entered into;

(c) where it appears to be an inefficient use of resources to pursue an APA due to the limited nature and value of the proposed transaction, or the arm's length principle on the proposed transaction can reliably be applied without material doubt;

(d) where the matter on which the APA is sought is subject to an appeal under section 99 of the Act;

(e) where the proposed covered transaction involves a tax avoidance scheme; or

(f) arrangements which involves improper use or abuse of the application of tax treaty to obtain unintended benefit.

13.2. If an application is declined, the taxpayer will be informed in writing of the reasons for such declination. The taxpayer is then allowed the opportunity to respond and make further representations within 30 days on which the subsequent decision of the DGIR is considered final.

14. WITHDRAWAL OF APPLICATION

14.1. The taxpayer may withdraw the application at any time before the arrangement is concluded. However, withdrawal from the process, especially at a late stage without good cause, is discouraged because of the inevitable waste of resources caused by such action.

14.2. Withdrawal of the application must be made in writing to the Department of International Taxation.

14.3. On the other hand, an application shall be deemed to have been withdrawn by the taxpayer under the following circumstances:

(a) failure to submit a formal application within stipulated time as mentioned in the paragraph 10 or paragraph 24 in case of APA renewal; or

(b) request for information at any stage of the APA process is not fulfilled within stipulated time as mentioned in the paragraph 30.

15. NEGOTIATING AN APA

15.1. The taxpayer will be informed of the DGIR's position with regards to the proposal in the application and subsequently, the negotiation process will commence with the taxpayer in the case of a unilateral APA and with the CAs for BAPA/MAPA.

15.2. In case of BAPA/MAPA, the Malaysian CA is responsible for liaising and negotiating directly with the CA(s) of the treaty partner(s) to discuss or clarify specific issues in respect of the APA which is provided under the Mutual Agreement Procedure (MAP) Article of the relevant Double Taxation Avoidance Agreement (DTA). Face-to-face meetings between the CAs may be necessary to resolve significant issues or to conclude the BAPA/MAPA within the targeted timeframe.

15.3. Further information on the MAP procedures can be found in the IRBM MAP Guidelines.

16. COVERED PERIOD

16.1. The APA Rules provide that the covered period shall be a minimum of three years and a maximum of five years. However, the covered period for BAPA/MAPA may be extended beyond maximum of five years, subject to agreement between the CAs.

16.2. The APA may be renewed to a further period as agreed upon by parties to the APA, subject to the requirement of the covered period as stated in the APA Rules.

17. ROLLBACK

17.1. Rollback is only permissible for the application of BAPA/MAPA. The DGIR may consider the request for rollback up to a maximum of three years of assessment immediately preceding the covered period, provided that the following conditions are fulfilled:

(a) if it is demonstrated that the proposed TPM is relevant to the resolution of the transfer pricing issues in the prior years' assessment; and

(b) the facts and circumstances surrounding those years are substantially the same as that of the covered period subject to verification on audit.

17.2. Rollback shall not be applicable if:

(a) the years of assessment have been audited;

(b) voluntary disclosure for transfer pricing case has been submitted for those years of assessments;

(c) the matter on which advance pricing is sought has been decided by the Special Commissioner of Income Tax or a court; and

(d) taxpayer has not submitted the amended tax computation for rollback years within 30 days from the date of signing the APA agreement.

18. CRITICAL ASSUMPTION

18.1. The critical assumption is important especially in developing the proposed TPM. This is the assumption on the operational and economic conditions that will significantly affect the transactions under consideration.

18.2. Critical assumption may relate to changes in governmental laws and regulations, business activities and market conditions that will have a material effect on the agreed transactions.

19. COMPLETION OF PROCESSING AN APPLICATION

19.1. The duration taken to formalize a position is dependent upon the co-operation of applicants, the complexity of the case, the completeness and quality of the information provided.

19.2. An APA can only be concluded once the terms and conditions have been confirmed and agreed upon by all parties involved.

20. IMPLEMENTATION OF APA AGREEMENT

20.1. The scope covered by an APA agreement is as follows:

(a) Covered entities i.e. taxpayer and the foreign related parties;

(b) Covered transaction(s) i.e. cross-border controlled transactions to be covered;

(c) Agreed TPM to be employed including arm’s length outcomes from applying the said TPM;

(d) Covered period i.e. duration of the APA;

(e) Critical assumptions; and

(f) Other agreed terms and conditions.

20.2. In the case of UAPA, the DGIR will proceed to issue the APA agreement after the taxpayer agrees to the outcome.

20.3. In the case of BAPA/MAPA, the DGIR will notify the taxpayer an agreed outcome of the BAPA/MAPA with relevant CA/CAs. The taxpayer shall consequently confirm in writing the acceptance of the BAPA/MAPA outcome within 30 days from the date of notification of the outcome.

20.4. If the BAPA/MAPA outcome between the relevant CA/CAs is not acceptable to the taxpayer, no action will be taken based on the outcome. In both instances, this application will be considered as complete.

20.5. Once an APA agreement becomes effective, the application of the agreed TPM to the subject matter of the APA will not be contested for the period covered by the APA so long as the taxpayer complies with the terms and conditions of the agreement.

21. ADJUSTMENTS

21.1. The terms of agreement in relation to adjustments are determined on a case-by-case basis.

21.2. Compensating adjustment will arise in situation when actual results differ from the agreed arm's length prices provided in the APA agreement. Taxpayers should make compensating adjustments in accordance with the terms in the APA agreements to arrive at the agreed arm's length prices.

21.3. The compensating adjustment(s) shall only apply to the covered transaction(s).

21.4. A taxpayer shall make a compensating adjustment in the annual tax return if the result of the covered transaction is not in agreement with the APA.

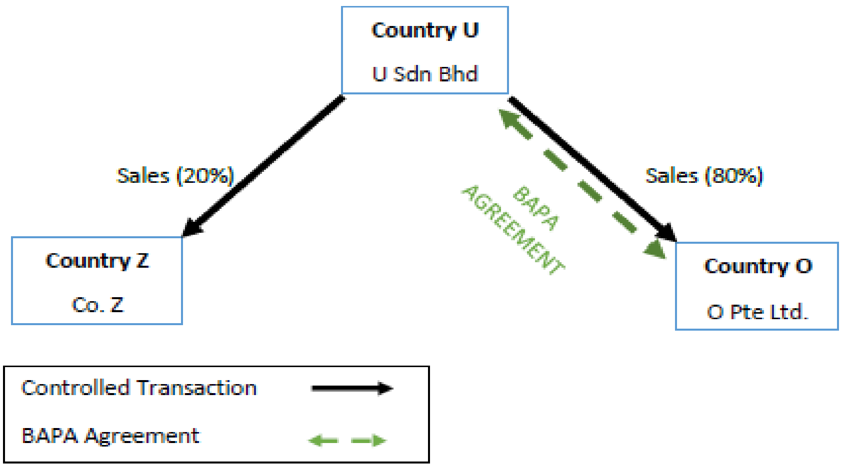
Example 1

M Sdn Bhd, financial year ending 31 December, applied for a Unilateral APA on 15 October 2017 for the covered period beginning 1 January 2019 through 31 December 2021. M Sdn Bhd and the DGIR reached an agreement for the APA with the agreed interquartile range for net margin at 7%-9%. The agreement states that if the net margin should fall below the lower quartile value, adjustment must be made to the median.

Subsequently, in the first covered period, M Sdn Bhd reported a net margin of 6.85% which is lower than the lower quartile. M Sdn Bhd must make a compensating adjustment to reflect a net margin of 8% which is the agreed median figure.

Example 2

U Sdn Bhd, financial year ending 31 December, applied for a BAPA on 2 December 2018 for the covered period beginning 1 January 2020 through 31 December 2022 for controlled sales between U Sdn Bhd and O Pte Ltd situated in country O. The controlled sales with country O are 80%, while the balance of controlled sales is with Company Z in country Z. There is no BAPA application with country Z. The compensating adjustment is based on 80% of the controlled transactions where the BAPA is applicable.



APA Term:

- Covered period – 01/01/2020 – 31/12/2022 (3 years);
- Agreed interquartile range for net margin – between 10% to 12% ;
- Compensating adjustment – if net margin fall below the lower quartile value, adjustment must be made to the lower quartile and, if net margin above the upper quartile value, adjustment must be made to the upper quartile;
- In year 2020 - U Sdn Bhd reported a net margin of 13.5% which is higher than the upper quartile. U Sdn Bhd must make a compensating adjustment to reflect a net of 12%. However, the compensating adjustment is based on 80% of controlled transaction only

21.5. In the case where a taxpayer fails to make the compensating adjustment, the DGIR shall make the appropriate adjustment and a surcharge under section 140A (3C) of the Act will be imposed on any upward compensating adjustment made.

22. APA ANNUAL COMPLIANCE REVIEW AND MONITORING

22.1. The APA compliance review by the DGIR is to verify whether:

(a) the terms and conditions stated in the APA have been properly complied with by the taxpayer;

(b) material representations in the APA, the related submissions, and the periodic Annual Compliance Reports remain valid and accurately describe the taxpayer's business operation;

(c) the taxpayer has applied the agreed TPM consistently in accordance with the terms and conditions of the APA;

(d) supporting data and calculations used in applying the agreed TPM were correct in all material respects; and

(e) critical assumptions underlying the APA remain valid and relevant.

22.2. For each year of assessment covered by the APA, the taxpayer is required to file, in addition to its annual tax return, an APA Annual Compliance Report (“ACR”). This report must be submitted to the Department of International Taxation within seven (7) months from the close of accounting period which constitutes the basis year for a year of assessment for the company (or any extended period as may be allowed by the DGIR for furnishing the return). The DGIR where applicable, may also determine any other date for filling of the ACR on case-by-case basis.

22.3. The ACR will be reviewed to ensure that the terms and conditions of the APA are complied with.

22.4. The ACR should consists:

(a) a set of relevant audited financial statements for that year of assessment, of:

(i) the taxpayer, and

(ii) the foreign entity (for the case of BAPA/MAPA);

(b) a detailed report and analysis by the taxpayer which include the followings:

(i) ownership structure of the local and foreign entities involved in the covered transactions;

(ii) local organisation chart;

(iii) details of controlled transactions consisting nature of transactions, quantum and percentage, entities involved and their location including the covered transaction;

(iv) details of covered transaction flow consisting of physical flow of goods, flow of invoice and payment;

(c) a report of the relevant covered transaction and the amount required to be reported respectively by the taxpayer and, in the case of BAPA/MAPA, a similar report by the other person involved in the covered transaction;

(d) a description of any material changes in financial or tax accounting methods or principles employed for that year of assessment in respect of the covered transactions that differ from the methods or principles stated in the APA. If in the taxpayer's opinion, there were no such material changes, an affirmative statement to that effect has to be furnished;

(e) a description of any failure and the reasons for such failure to meet a critical assumption. If there has been no such failure, an affirmative statement to that effect, as well as a statement on the continuing relevance of the critical assumptions has to be furnished;

(f) an analysis of any compensating adjustments or subsequent compensating adjustments required under the APA with the relevant tax computations and relevant supporting documents;

(g) relevant accounting entries in relation to the compensating adjustments for taxpayer and foreign entity(ies) to ensure the economic and tax position of the arm's length price is aligned;

(h) all relevant information and computations necessary to describe and support the application of the TPM for the covered transactions and the results which comply with the TPM for that year of assessment;

(i) all relevant documents pertaining to the particular circumstances of the taxpayer and the other person involved in the covered transaction; and

(j) any other relevant documents.

22.5. The taxpayer must keep relevant documents for the purpose of preparing the annual compliance report to demonstrate compliance with the terms of the agreement and the critical assumptions remain valid.

22.6. Failure to comply with this annual compliance reporting requirement may lead to cancellation of the APA and the taxpayer is thus open to a transfer pricing compliance audit.

23. PENALTIES

23.1. As long as an APA remains in effect and the taxpayer complies with the terms and conditions of the APA, no penalty under the Act will be imposed with respect to the covered transactions in the covered period.

23.2. However, where as a result of the application for an APA there is a need to revise rollback years of assessment; such adjustments may be subject to relevant penalty/surcharge provisions under the Act.

24. RENEWAL OF APA

24.1. A request for renewal of an APA should be as follows:

(a) made not later than 6 months before the expiration of the existing APA;

(b) submission of the updated information and supporting documents as required for submission for written request for pre-filing meeting stated in paragraph 9.4;

(c) formal application must be made within two months after the receipt of notification from DGIR pursuant to outcome of the pre-filing meeting for the purpose of an APA renewal; and

(d) relevant process and procedures stated in the Guidelines still apply.

24.2. If the formal application for renewal is not submitted after two months, the application shall be deemed to have been withdrawn by the taxpayer and a new written request must be filed afresh.

24.3. The APA can be renewed under the terms and conditions similar to the previous APA if:

(a) there have been no material changes in the facts and circumstances underlying the APA;

(b) critical assumptions remain valid and relevant; and

(c) the taxpayer has complied with the terms and conditions of the previous APA.

24.4. The DGIR or the CA shall inform the taxpayer in writing of his decision in respect of the request and the grounds thereof.

24.5. A taxpayer shall make a written request for a new APA in the event that the taxpayer does not qualify for renewal of the expiring APA due to the following conditions:

(a) the covered transaction has changed;

(b) there are material and anticipated changes in the fact and circumstances of the covered transaction;

(c) a different TPM is proposed; or

(d) there has been a change in the law.

25. REVISION OF APA

25.1. If an APA requires revision, the taxpayer should notify in writing to the DGIR within 30 days of becoming aware of the need for the revision. The notice should set out the reasons for the proposed revision and include supporting documentation.

25.2. An APA may be revised due to:

(a) failure to meet with critical assumptions as provided in the APA Agreement such as business activity has been changed or drastic changes in the economic environment; or

(b) a change in the law or the arrangement under section 132 that affects the APA.

25.3. The taxpayer and the DGIR need to agree on a revised Unilateral APA. Upon agreement by the taxpayer and the DGIR on the said revised APA, the taxpayer will be notified in writing of the effective date of that new agreement.

25.4. In the case of BAPA or MAPA, where the taxpayer and CA agree to revise the APA, the other relevant CA(s) will be notified of the revised APA for their consideration. The revised BAPA/MAPA is applicable only upon agreement of all the relevant CAs.

26. CANCELLATION OF APA

26.1. The DGIR or CA may cancel an APA as a result of the following circumstances:

(a) failure to comply with the terms and conditions of the APA by the taxpayer or any other person involved in the covered transaction;

(b) error or mistake in the APA application, annual compliance reports or renewal submissions of the covered transactions by the parties to the APA;

(c) failure to provide information, documentation and compliance report as required by the APA Rules in force;

(d) failure to conclude a revised Unilateral APA, BAPA or MAPA;

(e) the APA of the participating foreign competent authority has been cancelled; or

(f) a request by the taxpayer on reasonable grounds.

26.2. The relevant parties will be informed of the cancellation in writing specifying the following:

(a) grounds for the cancellation; and

(b) the effective date of the cancellation (which is from the beginning of the basis period for a year of assessment which relates to the circumstances as referred to under paragraph 26.1).

27. REVOCATION OF APA

27.1. The DGIR or the CA may revoke an APA if it is established that the any person in the covered transaction makes any of the followings:

(a) misrepresentation;

(b) fraud;

(c) omission of material facts;

(d) failure to disclose any occurrence of voluntary disclosure, investigation, audit, or incentive approval;

(e) a statement that is false or misleading in the APA application, report, or renewal submission; or

(f) the APA of the participating foreign competent authority has been revoked.

27.2. The relevant parties will be informed of the revocation in writing specifying the following:

(a) grounds for the revocation; and

(b) the effective date of the revocation which is from the first day of the covered period.

28. APA FEE AND OTHER PAYMENT

28.1. A fee will be charged for the application or renewal of an APA. Payment must accompany the formal APA application or renewal, as outlined in paragraph 10 of the Guidelines. Failure to submit payment with the application or renewal will result in non-processing.

28.2. The APA fee consists of a non-refundable application fee, which is:

(a) **five thousand ringgit (RM5,000.00)** for a fresh application or renewal of APA made within two months from the date of notification; or

(b) **ten thousand ringgit (RM10,000.00)** for a fresh application of APA made after two months but within six months from the date of notification.

28.3. Other payment will include reimbursement in respect of any other costs and expenses incurred by the DGIR. Such expenses may include accommodation, travelling, meal allowance and other relevant costs incurred during the processing of APA application or renewal and to be paid within thirty (30) days from the date of issuance of the billing invoice.

28.4. A taxpayer is still liable to pay all relevant fees and payment incurred up to the date of either receipt of the “letter of withdrawal” or the date of issuance of the “letter of declination” by the DGIR in the following cases:

(a) taxpayer withdraws the application or renewal for an APA;

(b) deemed withdrawn under paragraph 14.3 applies; or

(c) an APA application or renewal is declined by the DGIR.

PART IV

SUPPLEMENTAL

29. CONFIDENTIALITY OF INFORMATION

All information obtained by the DGIR or the Competent Authority in respect of the APA process is subject to the confidentiality provisions of the Act and the article on Exchange of Information provided under the relevant DTA for any the arrangement made under section 132 of the Act.

30. REQUEST FOR FURTHER INFORMATION

30.1. The DGIR or the CA may at any time request, in writing, from the taxpayer to furnish further information and documents which are relevant to the application to be submitted within the stipulated time. The DGIR may discontinue an APA application process where taxpayers demonstrate consistent lack of co-operation in providing complete and reliable information.

30.2. If the request for information at any stage of the APA process is not fulfilled within 30 days from the date of request, the application is deemed withdrawn and the taxpayer is required to file a new written request for a pre-filing meeting.

31. RECORD KEEPING REQUIREMENTS

The taxpayer must retain all books and records relied upon in concluding the APA, as well as all supporting documents in preparing the Annual Compliance Report.

32. TAX COMPLIANCE AUDIT

32.1. The DGIR will not accept any APA request on related party transaction that is under on-going audit or investigation. The APA application will only be considered after audit or investigation has been completed.

32.2. A tax compliance audit or an investigation may still be conducted on the taxpayer for transaction(s) not covered under the APA. However, the taxpayer is not excluded from being audited if there is non-compliance with the Act. In the event that the APA is cancelled or revoked, a full audit may be conducted.

33. CONTACT INFORMATION

For more information, please direct your enquiries to:

Department of International Taxation
Inland Revenue Board Malaysia
Level 12, Menara Hasil, Persiaran Rimba Permai, Cyber 8,
63000 Cyberjaya, Selangor
Contact Number - 03-8313 8888
E-mail address - lhdn_apa@hasil.gov.my

GLOSSARY

Advance Pricing Arrangement (APA)

An arrangement made to determine in advance the appropriate set of criteria to ascertain the arm's length transfer prices of a cross-border transaction.

Bilateral Advance Pricing Arrangement (BAPA)

An APA entered into by two Competent Authorities pursuant to the article on Mutual Agreement Procedure provided for in the arrangement made under section 132 of the Act.

Covered period

The basis period of the taxpayer for all prospective years of assessment covered under an APA.

Covered transaction

The cross-border transaction covered in an APA.

Critical assumption

Any assumed objective criterion that would significantly affect the terms of an APA if the underlying conditions changed, whether or not the change is within the person's control which may include any fact or condition about the taxpayer, a third party, or an industry, such as new business strategy or mode of conducting operations, or the cessation or transfer of a business segment or entity, or circumstances that would materially affect the suitability of the TPM or its application.

Independent Expert

Any person with specialised skills, or knowledge, relevant to an APA.

Multilateral Advance Pricing Arrangement (MAPA)

An APA entered into by more than two Competent Authorities pursuant to the article on MAP provided for in the arrangement made under section 132 of the Act.

Person

A company, a body of person, or a corporation sole.

Permanent establishment

Subject to the meaning assigned to it in the arrangement made under section 132 of the Act, a fixed place of business of a particular person through which the business of the person is wholly or partly carried on or a fixed place of business of another person, through which the particular person makes supplies, in which case the permanent establishment shall be treated as a distinct and separate enterprise from its head office and related branches.

Price

May also refer to interest rates in a financial assistance.

Revenue

Revenue refers to the definition stated in the Malaysian Financial Reporting Standard 118.

Rollback

The application of the terms and conditions of an APA to prior years of assessment.

Tax Treaty

An agreement signed by the Government of Malaysia and Treaty Partner Country for the avoidance of double taxation and the prevention of fiscal evasion.

Transaction

Shall be construed as a transaction between -

a. taxpayers one of whom has control over the other;
b. individuals who are relatives of each other; or
c. taxpayers both of whom are controlled by some other person.

Transfer Pricing Methodology (TPM)

Methodologies as provided in the Income Tax (Transfer Pricing) Rules 2023 [P.U.(A) 165/2023] that is in force.

Treaty Partner Country

A country with which Malaysia has signed a tax treaty.

Unilateral Advance Pricing Arrangement

An agreement between the DGIR and the taxpayer under section 138C of the Act

LEMBAGA HASIL DALAM NEGERI MALAYSIA
02 April 2024

S.K.: LHDN.01/46/198-1