

Advance Pricing Agreement (APA)



Advance Pricing Agreement (APA) means:

In the announcement from the Director-General of the Revenue Department Regarding income tax (No. 407), it is specified that companies or juristic partnerships that have relationships and transactions that are controlled have a duty to submit documents or evidence showing information necessary for analyzing the terms of transactions between companies or juristic partnerships that have relationships. The assessment official with the approval of the Director-General will have written to notify of such submission.

For section 3(2) of the announcement, this edition exempts those responsible for submitting documents. Evidence does not need to be submitted of documents or evidence of information according to this announcement if the person responsible for submitting documents or evidence has requested to make an Advance Pricing Agreement according to the contract or obligation regarding the avoidance of double taxation, and the authorized official of Thailand, or the Office of Thai Trade and Economic Affairs, has made such an agreement with the authorized official of the foreign country, or the Office of Economic and Trade of the foreign country, according to the person in charge of submitting the documents or all evidence has been requested. Only information relating to controlled transactions that are the subject of such forward pricing agreements remains in effect for the scheduled fiscal period of that agreement.

Many of you may not yet know what pre-contractual pricing agreements or double taxation avoidance obligations mean, and how they come about. Therefore, this is explained as follows:

Advance Pricing Agreement (APA) means an agreement on transfer pricing for transactions of businesses in the same group in advance under appropriate methods, criteria, and conditions for a specific period to make the overview easier to understand. An example is given as follows:

Example:

Company A is registered in Country M.

Company B is registered in Country E.

Company A has a relationship with Company B (Company A holds shares 75 percent in Company B).

Company A operates a product manufacturing business. and sells all its products to Company B.

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In accounting period 20XX, Company B purchased products from Company A to sell in the country and had a net loss. The tax department in Country E has called for an audit of Company B and reported that there were issues in determining compensation prices that differed from what would have been determined had Company B operated independently. The Revenue Department therefore assessed Company B's net profit increased from having a net loss to Company B having a net profit of \$100 million and calculated the tax charge to Company B's corporate income tax in the amount of \$20 million. Because Country M and Country E have a double tax treaty between them, therefore, in the case where the Revenue Department of Country E assesses additional taxes on Company B, it causes double taxation. That is, the Revenue Department of Country E estimates an increase in profits of \$100 million, however Company A in Country M shows this profit and incurs double taxation as it was already taxed in Country M.

Therefore, to eliminate double taxation that has occurred in this area and that may occur in the future, Company A has submitted a letter requesting to prepare an Advance Pricing Agreement (APA) to the competent authority of Country M and Company B. The letter requests to prepare an APA and submit it to the competent officials of Country E with the objective of asking the competent officials of both countries to set a time, and the negotiation process to eliminate existing and potential double taxes in the future resulting from overlapping tax payments. As a result of negotiations between the two countries' competent officials, it will be concluded that Company A and Company B should set prices in advance from selling products and how much net profit will be available to pay taxes in the next years for Company A and Company B. Which tax years may the negotiations cover? It depends on the outcome of the negotiations with the authorized officials. Each country will notify the results of the negotiations to the company that submitted the request and the address in their own country is known in writing.

Requests to prepare an Advance Pricing Agreement in Thailand is defined as a bilateral APA, which has the objectives:

1. To set transfer prices for transactions of businesses within the same group in accordance with the rules and conditions according to the Revenue Code.
2. To prevent and eliminate the issue of double taxation according to the agreement to avoid double taxation between Thailand and contracting countries.
3. To prevent tax evasion.
4. To promote cooperation and mutual understanding between taxpayers and tax collection agencies.
5. To enable taxpayers to estimate their tax burden.