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United States

U.S. APA Program Changes Positively Impact U.S.-Japan APAs

The authors examine recent changes to the U.S. Advance Pricing Agreement Program and conclude that U.S.-Japan bilateral APAs are more desirable than ever for Japan-based multinational corporations.



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From a relatively early point in the U.S. Advance Pricing Agreement Program's 25-year existence, Japan-based multinational corporations have pursued bilateral APAs between the two nations. In recent years, U.S.-Japan bilateral APA cases account for approximately 50 percent of all of resolved U.S. APA cases. Japan-based multinationals have historically focused on selling goods into the U.S. market and generally prefer

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to obtain as much certainty as possible regarding their transfer pricing issues.

The U.S. APA Program has undergone some recent changes in structure, personnel and procedures that improve the desirability of the U.S. APA process from the perspective of Japan-based multinational corporations. Additionally, external factors such as increased global transfer pricing enforcement and the Organization for Co-operation and Development's base erosion and profit shifting (BEPS) project also improve the desirability of a bilateral APAs.

After factoring in the changes to the U.S. APA Program and outside factors, how desirable are U.S. APAs to Japan-based multinational corporations? The short answer is more than ever.

Structural Change

Over the most recent six-year period, the U.S. APA Program has undergone considerable change.

Regarding structure, the former APA Program under Internal Revenue Service Chief Counsel (International) has been moved to the IRS Large Business and International Division (LB&I) and merged with Tax Treaty to become the Advance Pricing and Mutual Agreement (APMA) Program.

APMA has hired a significant number of personnel and also endured some turnover of personnel.

Finally, APMA published a new Revenue Procedure (Rev. Proc. 2015-41) to update previous Revenue Procedure 2006-9 that had governed the APA process.

The culmination of these changes will certainly have an impact on whether a Japan-based multinational will pursue an application for a U.S.-Japan APA.

New Organizational Chart

In 2010, the IRS underwent a substantial realignment to improve its enforcement of international tax laws, including transfer pricing.

As part of this realignment, the IRS relocated the APA program to its LB&I division and combined it with the Competent Authority function to create APMA. The APMA staff is responsible for negotiating both APAs and mutual agreement cases.

Following its relocation to LB&I, APMA was allowed to substantially increase staffing levels to address increased requests for APAs and MAPs. APMA staffing reached approximately 104 professionals by the end of 2012. Since that time, staffing levels remain relatively high at APMA, but the program has suffered some change in leadership and a number of experienced staff departures.

The illustration below summarizes APMA's current organizational structure:



The chart below shows the revised APMA structure that includes twelve groups, most of which have a country focus.

Groups 4 and 10 include Japan.

2015 Revenue Procedure

At the end of 2015, APMA published Rev. Proc. 2015-41, incorporating all changes to the APA process during the nearly 10 years since Rev. Proc. 2006-9, and adding some new requirements intended to standardize the APA process and make it more efficient.

First, Rev. Proc. 2015-41 stipulates the content and format of the APA submission package, with great specificity.

Rev. Proc. 2015-41 also requires more information in the APA request than did Rev. Proc. 2006-9. This change, informed by APMA's years of experience, attempts to reduce the need for follow-up meetings and questions, especially where the APA is a renewal or relatively straightforward.

The changes in Rev. Proc. 2015-41 also include potential mandatory inclusion of interrelated issues, statute of limitation extension, and mandatory pre-filing meetings in certain circumstances.

Finally, Rev. Proc. 2015-41 has the potential for an abbreviated APA request and new user fee schedule.

From a practical standpoint, the greatest changes to the APA process are a result of the stipulated APA re-

Group	Countries
1	Vacant
2	Economists and Israel
3	Australia, Austria, Canada, Kazakhstan, Netherlands, and New Zealand
4	Indonesia, Japan, South Africa, and Thailand
5	Canada, India, Italy, and Luxembourg
6	Vacant
7	Denmark, India, Ireland, Norway, Sweden, Switzerland and U.K.
8	Argentina, Canada, Caribbean, China, Eastern Europe, Germany, Mexico, Portugal, Puerto Rico, Spain and Venezuela
9	Belgium, Canada, France, Greece, Hungary, and India
10	Guam, Japan, Korea, Morocco and Philippines
11	Economists
12	Economists

quest format and the increased information required for completion of the APA request.

Intake Meetings

Some internal APA process developments are not discussed in Rev. Proc. 2015-41.

In order to assemble an appropriate team for each APA request, APMA periodically holds "intake meetings" where APA requests are evaluated by size and level of complexity before assignment of APMA team leaders and economists to each case.

Further, APMA has recently begun to focus on streamlining the APA case development, encouraging the "elevation" of issues that could prevent the case from moving forward. These internal changes can be expected to improve the overall efficiency of the APA process.

More Transfer Pricing Disputes

In addition to changes within the APA program, global changes to transfer pricing enforcement have also had an impact on the desirability of an APA. Each year, more countries initiate active transfer pricing enforcement, inevitably increasing the number of transfer pricing disputes.

The global inventories of disputes between treaty partners, largely composed of transfer pricing issues, have nearly doubled in five years, from 3,328 cases in 2010 to 6,176 cases in 2015.

Further, the OECD has acknowledged that the BEPS-related changes to transfer pricing, especially the country-by-country reporting requirements, are likely

to produce a large incremental increase in the number of transfer pricing disputes between treaty countries.

U.S.-Japan APAs

The U.S. APMA Program recently issued statistics for calendar year 2016, including some country specific information.

The Japanese percentage of overall APA filings declined from 39 percent in 2015 to 31 percent in 2016.

This statistic is largely explained because 2016 was the first year when a taxpayer could request a bilateral U.S.-India APA and that year U.S.-India bilateral APA filings constituted 34 percent of all filings.

U.S.-Japan bilateral APAs make up 34 percent of APAs currently in the APMA inventory of bilateral APAs.

Finally, U.S.-Japan APAs account for 54 percent of U.S. bilateral APAs agreed in 2016.

Based on these statistics, U.S.-Japan APAs are seen as valuable to Japan-based multinationals.

Conclusion

The above-discussed changes to the U.S. APA process are intended to make the process more efficient,

especially for taxpayers with renewal or straightforward APA requests.

All structural and staffing changes to the APMA Program are intended to create easier access and appropriate staffing for the APA process.

The standardized, front-loaded APA request format will require additional up-front taxpayer cost and effort, but the new format is intended to reduce the overall cost and increase the predictability of the APA process.

Greater global transfer pricing enforcement and the impact of BEPS, especially country-by-country reporting, should enhance the desirability of a bilateral APA.

The desirability of a unilateral APA will be lessened by the BEPS requirement that unilateral APAs are to be shared with affected countries.

In a post-BEPS environment, the value of a bilateral APA may also be increased to the extent the taxpayer has similar transactions between other related parties.

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