



Ireland introduces bilateral APA program

Global Transfer Pricing Alert 2016-022

The Irish Revenue on June 23 published bilateral advance pricing agreement guidelines relating to the operation of Ireland's APA program, which is effective for applications received on or after July 1, 2016. The guidance outlines the framework of the APA program, as well as the requirements to apply for an APA, and the roles and responsibilities of taxpayers and Irish Revenue.

The bilateral APA program was launched in response to action 14 of the OECD's base erosion and profit shifting (BEPS) project, "[Making Dispute Resolution Mechanisms More Effective](#)."

Summary of the guidelines

The APA program applies to bilateral APA applications made to Irish Revenue on or after July 1, 2016. Thus, the guidelines do not apply with respect to:

- Bilateral APAs signed before July 1, 2016;
- Formal bilateral APA applications submitted to Irish Revenue before July 1, 2016, but in respect of which an APA has not been concluded as of July 1, 2016 (Ireland had been accepting APA applications on an ad hoc basis before the introduction of the APA program in cases when a tax treaty partner has agreed to enter into APA negotiations); and
- Unilateral APAs (agreements between the taxpayer and Irish Revenue that do not involve another competent authority).

A separate process applies to taxpayer requests for opinions and confirmations that the taxpayer's analysis of the tax consequences of a proposed transaction is acceptable to Revenue.

The APA program applies to transfer pricing issues, including the attribution of profits to a permanent establishment (PE), and is conducted within the legal framework of the double tax treaties Ireland has entered into with other jurisdictions. An application may be made by a company that is tax resident in Ireland for purposes of the relevant double tax treaty and also by a PE in Ireland of a nonresident company, in accordance with the provisions of the relevant treaty.

The bilateral APA program is intended to apply to transaction that involve complex transfer pricing issues; for example, if there is significant doubt over the appropriate application of the arm's length principle, or there is a high likelihood of double taxation arising.

When the transfer pricing issues involve more than two tax jurisdictions, one of which is Ireland, Revenue will consider entering into a series of bilateral APAs to deal with such multilateral situations.

The bilateral APA program is voluntary -- taxpayers choose whether or not to enter into an agreement.

Suitable cases

An application may be made by a taxpayer for an APA in respect of the following:

- Transactions between separate business enterprises
- Transactions between parts of the same business enterprise operating in different countries (for example, between a head office and a PE, or between two separate PEs), subject to the provisions of the relevant double tax treaty.

Term and rollback

An APA will be granted for a fixed period of time, typically between three and five years (excluding any rollback years). Irish Revenue are willing to consider other fixed periods subject to the other tax administration's agreement.

In accordance with action 14 of the OECD's BEPS plan, Ireland will provide for the rollback of APAs in appropriate cases, subject to the applicable time limits of both countries that are party to the APA.

APA process

Part 4 of the guidelines sets out the distinct stages of the APA process:

- The prefiling stage, during which contact can be made with Irish Revenue on an informal basis to discuss the potential APA application. A prefiling meeting is encouraged to discuss the case. In exceptional cases, Irish Revenue are prepared to consider prefiling meetings on an anonymous basis.
- The formal APA application stage, during which certain information must be provided as part of the process. The necessary information is listed in an appendix to the guidelines and includes:
 - A cover letter
 - An executive summary
 - Company background
 - An industry analysis
 - An overview of covered transactions
 - A functional and economic analysis
 - Financial information
 - Legal agreements
 - Details of any other tax authority audit inquiries relevant to the application
- Evaluation of the APA application by Irish Revenue and negotiation of the APA with the other competent authority.
- Formal agreement.
- An annual reporting requirement, whereby an annual report must be filed with Irish Revenue. The annual report should include:
 - A statement whether the terms and conditions of the APA have been complied with
 - A statement whether any critical assumptions underlying the transfer pricing methodology remain valid
 - Financial data for the reporting period, and a comparison to the target arm's length result agreed to in the APA
 - Details of any adjustments made to stay within the arm's length range
 - Any other information that may have a material impact on the APA.

The Irish Revenue have committed to conclude a bilateral APA, whenever possible, within a 24-month time frame once the formal application is received.

Comments

With the increasing scrutiny and auditing of transfer pricing activities by tax authorities worldwide, the formalization of a bilateral APA program is a welcome development for Irish taxpayers.

APAs help prevent disputes between the taxpayer and a tax administration regarding the covered transactions, and the risk of double taxation. They provide certainty the taxpayer's selected transfer pricing method, and may mitigate audit exposure on major transfer pricing issues. Within the APA framework, tax administrations and taxpayers cooperate with each other in a nonadversarial environment.

Bilateral APAs provide certainty to taxpayers that the covered transfer pricing issues will not be subject to audit adjustments by the tax authorities of the countries that enter into the APA, provided the terms and conditions of the agreement are satisfied.

Overall, the formalization of the bilateral APA procedure is a positive development for Irish businesses, which are dealing with an increasingly challenging international tax environment where transfer pricing attracts significant attention from tax authorities globally.

Taxpayers contemplating entering into a bilateral APA should note that as a result of changes to transfer pricing documentation resulting from BEPS action 13, "Transfer Pricing Documentation and Country-by-Country Reporting," such arrangements may have to be disclosed in the master file and relevant local file. Moreover, EU Council Directive (EU) 2015/2376 on the mandatory automatic exchange of information will apply from January 1, 2017, and Irish Revenue will be obligated to automatically exchange certain information in relation to APAs with other EU member states, and to inform the European Commission of that information. In addition, some basic information will have to be provided in relation to APAs with non-EU jurisdictions. Taxpayers should consider these developments as part of their APA strategy.

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