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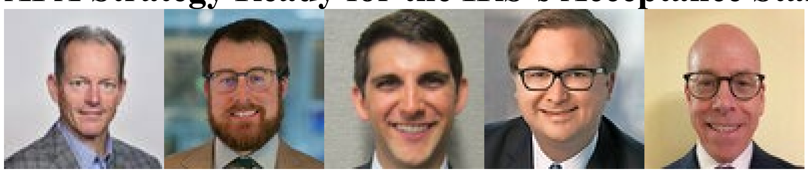
Is Your APA Strategy Ready for the IRS's Acceptance Standards?



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With the IRS's acceptance process for advance pricing agreements, or APAs, now incorporated in the Internal Revenue Manual and thus firmly entrenched in administrative guidance and policy, taxpayers contemplating an APA in 2026 face a more rigorous—though clearer—pre-filing landscape. That doesn't mean the demise of APAs. The program remains robust, and the majority of potential APAs shouldn't face any serious impediment.

However, taxpayers should be prepared for a different sort of conversation with the Advance Pricing and Mutual Agreement, or APMA, program than they may have had in the past—one that now demands greater preparation and a more deliberate consideration of whether an APA is the most suitable avenue for a given case. Understanding the acceptance criteria and preparing accordingly is crucial.

The path to this point started in April 2023 when the IRS first released an interim guidance memorandum outlining its internal procedures for evaluating APA requests for acceptance. LB&I-04-0423-0006 (Apr.

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25, 2023) (reissued as LB&I-04-0425-0005 (Apr. 22, 2025)) to allow more time for its subsequent inclusion in the memorandum). Initially, little changed in practice for most applicants: The memorandum didn't materially alter APA acceptance, and the APA program continued to successfully process a high volume of cases.

In September 2025, the interim guidance was incorporated into the IRM—for ease of reference, we'll refer to this as the "APA acceptance process" and the associated guidance as the "APA acceptance guidance". IRM ¶ 4.60.3.3.3 (09-08-2025) (pre-filing memorandum review), ¶4.60.3.3.4 (09-08-2025) (APA request review and acceptance), Exhibit 4.60.3-2 (procedures for pre-filing memorandum review), Exhibit 4.60.3-3 (procedures for APA request review).

With the benefit of two years' consideration of how the 2023 IGM applied to APA cases, the IRS cemented in the IRM a careful review of each proposed APA's suitability as an essential part of the pre-filing process.

APA Acceptance Options

The APA acceptance process wasn't intended to limit APAs, but to allow the IRS (and taxpayers) to consider the most suitable workstream for a given case. LB&I-04-0423-0006 (Apr. 25, 2023) ("This guidance also isn't intended to limit or decrease the number of APA requests accepted by APMA."). The IGM's focus therefore wasn't on evaluating suitability for an APA in a vacuum, but rather on determining the relative suitability of a case for an APA or another available workstream, such as the international compliance assurance program, or ICAP, joint audit, or mutual agreement procedure, or MAP.

ICAP. The IRS championed ICAP—an OECD-designed multilateral risk review focused on transfer pricing—since its first pilot in 2018. Because ICAP provides comfort without the legal certainty of an APA, it requires substantially less time to complete, and could be a good alternative in, for example, cases where there is a high likelihood all concerned tax authorities would accept the taxpayer's as-filed transfer pricing. While ICAP has not yet experienced the same success as APAs, it has the potential to play an important role in a company's tax certainty strategy.

Joint Audit. The potential use of joint audits seems to draw inspiration from the IRS's counterparts in other parts of the world, where such audits are more common, and from work on the topic by the Forum on Tax Administration, or FTA. From the tax authority perspective, a joint audit isn't unlike ICAP on steroids—a chance for two or more jurisdictions to fully develop the facts of a case in a coordinated fashion and assess whether any adjustment is required. From the taxpayer perspective, it may seem difficult to imagine a less appealing alternative than being audited by two or more tax administrations at the same time. Certain issues, however, call for strong medicine; FTA guidance and IRS procedures contemplate that taxpayers may wish to proactively request joint audits in certain circumstances.

MAP. Then, of course, there is the traditional path of an IRS transfer pricing audit. Transfer pricing remains a key enforcement focus for the IRS. Where the adjustment falls within the scope of a bilateral tax treaty, relief from double taxation can be pursued in MAP. While APAs will almost always be more efficient for both taxpayers and tax administrations than dealing with multiple audit cycles and multiple associated MAP cases, there are rare circumstances where APMA may find a MAP case easier to successfully conclude than an APA on the same issue. Note that the exam selection process by LB&I is separate from the APA acceptance process. Therefore, there shouldn't be significant concern from taxpayers that an APA pre-filing meeting, for example, may lead directly to IRS transfer pricing scrutiny for taxpayers not already under examination.

APA Acceptance Considerations

The APA acceptance guidance provides the framework by which APMA decides whether to accept an APA request, even in cases where ICAP and examination aren't viable alternatives. As such, the criteria it lays out merit careful consideration from prospective applicants.

As outlined in more detail below, the APA acceptance guidance sets forth guidance for the pre-filing stage and the APA submission stage, and has specific criteria for rollback, renewals, and unilateral cases. Note, however, that our experience has been that the key considerations in both the pre-filing and submission phases are: (1) the likelihood of a transfer pricing dispute (and hence a MAP case) on the proposed covered issues; (2) the materiality of the proposed covered issues (and/or significance); and (3) the ability for APMA to reach a resolution with the specific treaty partner on these issues on a prospective basis.

At the pre-filing stage, the IRM outlines the following considerations:

- The significance of the proposed covered issues relative to the resources required
- Whether sufficient time remains on the applicable statutes of limitations
- The likelihood of enhancing compliance by engaging with treaty partners
- Whether the APA may affect compliance for prior periods
- The feasibility of ICAP as an alternative workstream
- The feasibility of an IRS examination (presumably followed by MAP, where necessary) or a joint audit as an alternative workstream

- For taxpayers in the IRS compliance assurance process, or CAP, whether the IRS CAP team had recommended an APA
- For multilateral cases, whether the infrastructure for effective exchange of information is in place.

Both the materiality and the complexity of the proposed covered issues are relevant. When considering materiality, it's important to evaluate this both in objective terms and relative to the taxpayer's size. Rev. Proc. 2015-41 expressly contemplates that smaller taxpayers should be able to access the APA program in a streamlined manner for small case APAs, and smaller taxpayers grappling with existential issues should stress the significance of the issue to their business rather than let the dollar figures speak for themselves.

At the submission review phase, the guidance provides that the same factors are relevant, as are several additional considerations:

- The potential for a transfer pricing dispute, considering the taxpayer's proposed method and examination history
- The likelihood that an APA would be able to cover prospective years (as opposed to cases where negotiations continue for the entire proposed APA term)
- Any pertinent considerations specific to the treaty partner, including the availability of mandatory binding arbitration
- Whether the proposed covered transfer pricing issues are secondary to any domestic law issues (such as limits on deductibility)
- The views of the treaty partner regarding the suitability of the proposed APA.

The potential for a dispute to arise in the absence of an APA has become a key consideration – perhaps even the first among equals. If APMA anticipates that it will likely have to grapple with the case in MAP down the line, earlier resolution through the APA program promotes the interests of efficient tax administration. So does the government's self-interest, at least where the risk lies with the counterparty country: The IRS generally will fare better negotiating with the taxpayer's proposal as a baseline rather than swimming upstream against another tax authority's proposed adjustment.

The second factor is also critical. If APMA's experience with a treaty partner indicates that APAs for certain issues can't reliably be agreed on an advance basis because the proposed term has expired by the time the APA is finalized, this weighs against acceptance. This is also true where experience indicates that similar APAs haven't resulted in agreement on a principled methodology and have instead resulted in, for instance, agreement to simply accept as-filed results or to make adjustments of a negotiated magnitude. A concern for timing can be seen in the third factor: Arbitration provisions, after all, not only ensure resolution but also set a time limit for negotiations, and other country-specific considerations no doubt should include the meeting cadence and negotiation record with the treaty partner in question.

In the immediate aftermath of the 2023 IGM, these are the considerations that loomed large. Rather than cut off the possibility of any APA with a given partner jurisdiction, in our experience APMA took a more nuanced and pragmatic approach.

If APAs, say, for business restructurings couldn't be resolved with a given treaty partner, APMA would view MAP as a more suitable resolution paradigm for those cases, without limiting taxpayers' ability to pursue APAs for other issues with the same treaty partner. In the immediate aftermath of the 2023 guidance, this factor was the primary consideration for APAs, and a sensible one. Expending resources on an APA that experience suggested wouldn't succeed serves neither the taxpayer nor the tax administration.

The views of the treaty partner are an important, though not dispositive, factor. The US and foreign competent authorities may have differing views on the significance of the issues and the importance of accepting an APA. Taxpayers concerned about APA acceptance would benefit from consulting with the foreign competent authority as well as with APMA.

For unilateral cases, the following additional considerations are relevant:

- Whether a unilateral APA is the only or most efficient option to achieve tax certainty
- Whether the unilateral APA is part of a synthetic bilateral or multilateral resolution (for example, a unilateral APA in the US coordinated with a unilateral APA in a non-treaty partner jurisdiction to form a synthetic bilateral APA, or a unilateral APA in the US coordinated with a bilateral APA between two other countries to form a synthetic multilateral APA)
- The risk of base erosion or profit shifting from the perspective of the other jurisdiction
- Unilateral APAs for issues that could be addressed on a bilateral or multilateral basis are subject to particular scrutiny and must be addressed in a pre-filing memorandum. There often are cases (such as issues that are material in aggregate but involve a large number of counterparty jurisdictions and aren't material vis-à-vis any given counterparty) where a unilateral APA should be pursued in lieu of an alternative, but care must be taken when to present the case in a light that makes sense under the APA acceptance guidance.
- Similarly, renewals are subject to a few unique considerations, as laid out in the guidance:
- The existence of a continuing dispute risk or other need for the APA
- How straightforward the renewal is (such as, is the taxpayer proposing modifications to the scope of the APA)

- Whether the renewal can be streamlined with the treaty partner
- The taxpayer's compliance with the prior APA.

The first factor has the potential to deceive. Dispute risk may seem low so long as the taxpayer remains in the APA program through repeated renewals, but once a taxpayer opts not to renew, all bets are off. We have seen tax authorities that agreed to a certain methodology in an unrenewed APA propose a fundamentally different methodology in a later, uncovered period for which the underlying facts remained materially the same. If negotiations have been difficult in prior APA cycles, this generally indicates that there is continuing dispute risk in the absence of an APA.

Rollback requests are subject to separate evaluation, with the guidance specifying certain additional criteria:

- The IRS's interest in rollback, including whether the taxpayer is in litigation for any rollback years
- Whether rollback is likely to increase US taxable income
- If a rollback would likely decrease US taxable income, whether MAP would be more efficient
- Why the taxpayer didn't previously request an APA for the rollback period

One important factor that isn't expressly enumerated in the APA acceptance guidance is the attitude of the IRS examination function to any proposed rollback. Where the issue has previously been the subject of IRS examination, the exam team's input will be key. IRS exam teams often strongly favor the pursuit of APAs for subsequent periods because they take time-consuming transfer pricing issues off their plate and into the more efficient APA process where a larger number of years can be dealt with at once. For instance, IRS guidance encourages CAP taxpayers to seek APAs for transfer pricing issues.

Looking Ahead

The APA acceptance guidance brings greater rigor to APA acceptance as well as greater clarity. Only a small number of cases—particularly those which prior experience indicates can't be successfully resolved in a reasonable amount of time, and those where the IRS believes no dispute risk exists—are likely to be turned away. Significantly, the IRS continues to view the APA program as a good tool for resolving complex cases that pose material dispute risks.

Regardless of the complexity of a contemplated APA, APA acceptance considerations now pervade pre-filing discussions. Taxpayers would do well to think about and present their case in the way that makes the most sense in light of the APA acceptance factors, including via the submission of a detailed pre-filing memorandum (such as, a pre-filing conference request form) and fully addressing the relevant factors for APA acceptance in any pre-filing conference materials.

While the APA acceptance process consists of multiple layers of review, and a proactive taxpayer will have more than one opportunity to make its voice heard, appealing from an adverse recommendation is no substitute for advance preparation.

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