



Tax Insights

ATO announces a review of the Advance Pricing Arrangement (APA) program

Snapshot

On 12 January 2022, the Australian Taxation Office announced that it is conducting a review of its Advance Pricing Arrangement (APA) program. The announcement can be found [here](#).

The review will focus on whether the program is assuring transfer pricing risk in the most efficient manner, as well as whether the APA program is providing the right service for all taxpayers. It is noted that the ATO states that it remains committed to the APA program.

The review will also evaluate how to modify the APA process to better align with risk and taxpayer behavioural indicators. The ATO is interested in how it can better tailor the program for 'the full spectrum of potential risks' that may come up under an APA.

There will be a consultation process with taxpayers and advisors regarding market perspectives of the APA program. The terms of reference will likely include feedback regarding why the program is appealing as well as the types of arrangements and transactions for which taxpayers are most interested in obtaining certainty in an APA.

Why is the ATO reviewing the APA program now?

There are likely a number of factors influencing the announcement of this change. There are some APAs which have proved difficult to move forward at an efficient pace, particularly where the issues being considered include business restructures with transfer or valuation of intellectual property, other complex and unique issues such as market disruption as well as COVID-19 pandemic driven challenges. These issues often involve multiple internal stakeholders in the ATO, increasing potential for protracted discussions and differences of views, which lead to inefficiencies and process challenges. This has led to substantial delays in completing some APAs and in certain cases the ATO has withdrawn from the APA process, due to the complexity of the issues which has resulted in an inability to reach an agreed position with taxpayers.

A likely second contributory factor is the management of limited resources within the ATO, where ATO leadership may be considering the best allocation of resources to manage tax risk. This is in the context of other programs available to assure tax risk e.g., Top 100 and 1,000 assurance processes, as well as Practical Compliance Guideline (PCG) guidance.

Our view

Deloitte welcomes a review of the APA program that improves efficiency for taxpayers and provides better and clearer routes to obtain certainty in the difficult area of transfer pricing. This is particularly important given the APA program is one of the few ways taxpayers can get certainty.

In the current environment, significant ATO resources are focussed on the tax assurance programs (for example, the Top 1,000 Streamlined Tax Assurance Reviews and the Next Actions Risk Reviews). While these programs often have a focus on transfer pricing issues, the ATO teams do not have sufficient time to consider the factual circumstances and develop an informed view on transfer pricing to provide any sort of assurance to taxpayers. Also, these programs are by their nature generally backward looking, unlike the APA program. As such, we are of the view that these products as currently designed will be poor substitutes for an APA process in many situations.

We support the continuation of the APA program to provide forward certainty in an environment that often is more collaborative than an audit or review. We believe that there is a benefit in having the ATO's best transfer pricing capability involved in the APA program as it will result in quicker and more tailored processes and agreements, and we are of the view that voluntary forward looking transfer pricing compliance can continue to play a key role in meeting the ATO's objectives of efficient resource use to manage the Australian tax base.

We agree that a review of the criteria for eligibility for APAs and better tailoring of case plans based on the issues, provides potential upside for the APA program compared with the current approach.

The genesis of the APA program in the early 1990s was the desire of tax authorities such as the ATO to deal with the most complex and unique transfer pricing issues in a co-operative and real time environment, rather than in protracted audits dealing with aged legacy issues. We hope that the benefits of this mindset are not forgotten by the ATO.

What should taxpayers do?

Taxpayers that are currently in the APA program, or considering applying, should stay close to this review. For any renewal or new APA applications, the outcomes of the review will have implications on the nature of the engagement with the ATO. We will continue to monitor and provide updates as the review and consultation processes progress. In the meantime, if you would like to discuss this with a member of Deloitte's APA team, please reach out. Contact details are listed below.

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