

INTERNAL REVENUE BULLETIN



HIGHLIGHTS OF THIS ISSUE

Bulletin No. 2017-15
April 10, 2017

These synopses are intended only as aids to the reader in identifying the subject matter covered. They may not be relied upon as authoritative interpretations.

INCOME TAX

Action On Decision 2017-02, page 1072.

Nonacquiescence to the holding that buildings built to operate as retail stores are placed in service for depreciation purposes when substantially completed to house and secure racks, shelving and merchandise.

Action On Decision 2017-03, page 1072.

Nonacquiescence to the holding that, under the completed contract method of accounting, taxpayer completed a home construction contract when it incurred 95 percent of the estimated cost of constructing an entire development.

Announcement 2017-03, page 1077.

This Announcement is issued pursuant to § 521(b) of Pub. L. 106-170, the Ticket to Work and Work Incentives Improvement Act of 1999, which requires the Secretary of the Treasury to report annually to the public concerning advance pricing agreements (APAs) and the Advance Pricing and Mutual Agreement Program (APMA Program), formerly known as the Advance Pricing Agreement Program (APA Program). The first report covered calendar years 1991 through 1999. Subsequent reports covered each calendar year 2000 through 2015 separately. This eighteenth report describes the experience, structure, and activities of the APMA Program during calendar year 2016. It does not provide guidance regarding the application of the arm's length standard.

Notice 2017-17, page 1074.

This notice invites comments on a proposed revenue procedure that, if finalized, will provide procedures by which a taxpayer may request consent to change a method of accounting for recognizing income when the change is made for the same taxable year for which the taxpayer adopts the new financial accounting revenue recognition standards and the change is made as a result of, or directly related to, the adoption of the new revenue recognition standards.

EMPLOYMENT TAX

Action On Decision 2017-04, page 1072.

Acquiescence in result only as to whether Taxpayer's payment of personal expenses on behalf of its sole shareholder-corporate officer constitutes wages subject to Federal employment taxes.

The IRS Mission

Provide America's taxpayers top-quality service by helping them understand and meet their tax responsibilities and enforce the law with integrity and fairness to all.

Introduction

The Internal Revenue Bulletin is the authoritative instrument of the Commissioner of Internal Revenue for announcing official rulings and procedures of the Internal Revenue Service and for publishing Treasury Decisions, Executive Orders, Tax Conventions, legislation, court decisions, and other items of general interest. It is published weekly.

It is the policy of the Service to publish in the Bulletin all substantive rulings necessary to promote a uniform application of the tax laws, including all rulings that supersede, revoke, modify, or amend any of those previously published in the Bulletin. All published rulings apply retroactively unless otherwise indicated. Procedures relating solely to matters of internal management are not published; however, statements of internal practices and procedures that affect the rights and duties of taxpayers are published.

Revenue rulings represent the conclusions of the Service on the application of the law to the pivotal facts stated in the revenue ruling. In those based on positions taken in rulings to taxpayers or technical advice to Service field offices, identifying details and information of a confidential nature are deleted to prevent unwarranted invasions of privacy and to comply with statutory requirements.

Rulings and procedures reported in the Bulletin do not have the force and effect of Treasury Department Regulations, but they may be used as precedents. Unpublished rulings will not be relied on, used, or cited as precedents by Service personnel in the disposition of other cases. In applying published rulings and procedures, the effect of subsequent legislation, regulations, court decisions, rulings, and procedures must be considered, and Service personnel and others concerned are cautioned

against reaching the same conclusions in other cases unless the facts and circumstances are substantially the same.

The Bulletin is divided into four parts as follows:

Part I.—1986 Code.

This part includes rulings and decisions based on provisions of the Internal Revenue Code of 1986.

Part II.—Treaties and Tax Legislation.

This part is divided into two subparts as follows: Subpart A, Tax Conventions and Other Related Items, and Subpart B, Legislation and Related Committee Reports.

Part III.—Administrative, Procedural, and Miscellaneous.

To the extent practicable, pertinent cross references to these subjects are contained in the other Parts and Subparts. Also included in this part are Bank Secrecy Act Administrative Rulings. Bank Secrecy Act Administrative Rulings are issued by the Department of the Treasury's Office of the Assistant Secretary (Enforcement).

Part IV.—Items of General Interest.

This part includes notices of proposed rulemakings, disbarment and suspension lists, and announcements.

The last Bulletin for each month includes a cumulative index for the matters published during the preceding months. These monthly indexes are cumulated on a semiannual basis, and are published in the last Bulletin of each semiannual period.

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Actions Relating to Court Decisions

It is the policy of the Internal Revenue Service to announce at an early date whether it will follow the holdings in certain cases. An Action on Decision is the document making such an announcement. An Action on Decision will be issued at the discretion of the Service only on unappealed issues decided adverse to the government. Generally, an Action on Decision is issued where its guidance would be helpful to Service personnel working with the same or similar issues. Unlike a Treasury Regulation or a Revenue Ruling, an Action on Decision is not an affirmative statement of Service position. It is not intended to serve as public guidance and may not be cited as precedent.

Actions on Decisions shall be relied upon within the Service only as conclusions applying the law to the facts in the particular case at the time the Action on Decision was issued. Caution should be exercised in extending the recommendation of the Action on Decision to similar cases where the facts are different. Moreover, the recommendation in the Action on Decision may be su-

perseded by new legislation, regulations, rulings, cases, or Actions on Decisions. Prior to 1991, the Service published acquiescence or nonacquiescence only in certain regular Tax Court opinions. The Service has expanded its acquiescence program to include other civil tax cases where guidance is determined to be helpful. Accordingly, the Service now may acquiesce or nonacquiesce in the holdings of memorandum Tax Court opinions, as well as those of the United States District Courts, Claims Court, and Circuit Courts of Appeal. Regardless of the court deciding the case, the recommendation of any Action on Decision will be published in the **Internal Revenue Bulletin**.

The recommendation in every Action on Decision will be summarized as acquiescence, acquiescence in result only, or nonacquiescence. Both “acquiescence” and “acquiescence in result only” mean that the Service accepts the holding of the court in a case and that the Service will follow it in disposing of cases with the same controlling facts. However, “acquiescence” indicates neither approval nor disapproval of the reasons assigned by the court for its conclusions; whereas, “acquiescence in result only” indicates disagreement or concern

with some or all of those reasons. “Nonacquiescence” signifies that, although no further review was sought, the Service does not agree with the holding of the court and, generally, will not follow the decision in disposing of cases involving other taxpayers. In reference to an opinion of a circuit court of appeals, a “nonacquiescence” indicates that the Service will not follow the holding on a nationwide basis. However, the Service will recognize the precedential impact of the opinion on cases arising within the venue of the deciding circuit.

The Commissioner does NOT ACQUIESCE in the following decisions:

Stine, LLC v. United States,¹

No. 13–03224, 2015 WL 403146 (W.D. La. Jan. 27, 2015)

Shea Homes, Inc. and Subs. v. Commissioner,²

834 F.3d 1061 (9th Cir. 2016), aff’g 142 T.C. 60 (2014)

The Commissioner does ACQUIESCE IN RESULT ONLY in the following decision:

Scott Singer Installations, Inc. v. Commissioner,³

T.C. Memo 2016–161

¹Nonacquiescence to the holding that buildings built to operate as retail stores are placed in service for depreciation purposes when substantially completed to house and secure racks, shelving and merchandise.

²Nonacquiescence to the holding that, under the completed contract method of accounting, taxpayer completed a home construction contract when it incurred 95 percent of the estimated cost of constructing an entire development.

³Acquiescence in result only as to whether Taxpayer’s payment of personal expenses on behalf of its sole shareholder-corporate officer constitutes wages subject to Federal employment taxes.

Part III. Administrative, Procedural, and Miscellaneous

PROPOSED REVENUE PROCEDURE FOR REQUESTING CONSENT TO CHANGE A METHOD OF ACCOUNTING WHERE THE CHANGE IS MADE AS A RESULT OF, OR DIRECTLY RELATED TO, THE ADOPTION OF NEW FINANCIAL ACCOUNTING STANDARDS, “REVENUE FROM CONTRACTS WITH CUSTOMERS.”

Notice 2017–17

PURPOSE

This notice invites comments on a proposed revenue procedure that, if finalized, will provide procedures by which a taxpayer may request consent to change a method of accounting for recognizing income when the change is made for the same taxable year for which the taxpayer adopts the new financial accounting revenue recognition standards and the change is made as a result of, or directly related to, the adoption of the new revenue recognition standards (a qualifying same-year method change).

BACKGROUND

On May 28, 2014, the Financial Accounting Standards Board (FASB) and the International Accounting Standards Board (IASB) jointly announced new financial accounting standards for recognizing revenue (new standards), titled “Revenue from Contracts with Customers.” See FASB Update No. 2014–09 and IASB International Financial Reporting Standard (IFRS) 15.

The new standards are effective for publicly-traded entities, certain not-for-profit entities, and certain employee benefit plans for annual reporting periods beginning after December 15, 2017. For all other entities, the new standards are effective for annual reporting periods beginning after December 15, 2018. Early adoption is allowed for reporting

periods beginning after December 15, 2016. See FASB Update No. 2015–14, “Revenue from Contracts with Customers (Topic 606), Deferral of the Effective Date.”

Since the joint announcement, FASB and IASB have revised the new standards and provided guidance on how to implement the new standards in certain situations. See, e.g., FASB Update No. 2015–14; FASB Update No. 2016–10, “Revenue from Contracts with Customers (Topic 606), Identifying Performance Obligations and Licensing.”

On June 15, 2015, the Department of Treasury (Treasury Department) and the Internal Revenue Service (IRS) published Notice 2015–40, 2015–24 I.R.B. 1057, which requested comments on federal tax accounting issues related to the adoption of the new standards, including, whether the new standards are permissible methods of accounting for federal income tax purposes, the types of accounting method change requests that might result from adopting the new standards, and whether the current procedures for obtaining IRS consent to change a method of accounting are adequate to accommodate those requests. Very few comments were received. Some commenters requested additional time to respond and others reported that, as a result of adopting the new standards, taxpayers might request multiple changes in accounting method. This notice addresses only the procedures for obtaining IRS consent to a qualifying same-year method change. The Treasury Department and the IRS continue to invite comments on issues of conformity between the new standards and the Internal Revenue Code (Code) and the Treasury Regulations (Regulations), and are considering addressing these issues in separate guidance.

Qualifying same-year method changes may include automatic changes for which existing guidance, including Revenue Procedure 2015–13, 2015–1 I.R.B. 419, and Revenue Procedure 2016–29, 2016–21 I.R.B. 880, already provides automatic change procedures. Taxpayers requesting consent for automatic changes for which existing guidance already provides automatic change procedures must use the exist-

ing automatic change procedures to make a request. For qualifying same-year method changes for which existing guidance does not provide automatic change procedures but which comply with § 451 of the Code or other guidance regarding the taxable year of inclusion of income, the taxpayer must make the change under the proposed revenue procedure.

REQUEST FOR COMMENTS ON ISSUES OF CONFORMITY BETWEEN THE NEW STANDARDS AND THE CODE AND REGULATIONS

Adoption of the new standards may create or increase differences between financial accounting and tax accounting rules. The Treasury Department and the IRS recognize that there is interest in clarifying whether the new standards are permissible methods of accounting that may be used for federal income tax purposes. Accordingly, the Treasury Department and the IRS continue to seek comments on the specific issues identified in Notice 2015–40 regarding conformity between the new standards and the Code and the Regulations. Comments are specifically requested on the following issues:

1. To what extent would using the new standards for federal income tax purposes result in acceleration or deferral of income under § 451 or other income provisions of the Code?

2. What industry and/or transaction-specific issues might arise as a result of the new standards that may need to be addressed in future guidance?

3. To what extent do the new standards deviate from the requirements of § 451? In what situations should the IRS allow taxpayers who adopt the new standards to follow their book method of accounting for tax purposes (for example, where income is always accelerated)?

4. To what extent do the rules regarding allocation of standalone sales price and transaction price in the new standards affect taxpayers’ ability to satisfy their tax obligations?

REQUEST FOR COMMENTS ON PROCEDURES FOR METHOD CHANGES

This notice sets forth proposed procedures for obtaining IRS consent to a qualifying same-year method change. In connection with this notice, the Treasury Department and the IRS request comments on all aspects of the proposed procedures and on the specific method change issues identified in Notice 2015-40. Comments are specifically requested on the following issues:

1. Is the exception for small businesses in paragraph 5.02(2) of the proposed revenue procedure appropriate?

2. What types of changes in methods of accounting do taxpayers anticipate requesting?

3. Do taxpayers anticipate requesting changes in methods of accounting prior to the effective dates of the new standards?

4. Which procedures should taxpayers be required to use to request permission for a qualifying same-year method change, the automatic accounting method change procedures or the advance consent procedures?

5. What changes, other than those described in Section 5 of the proposed revenue procedure, do taxpayers expect will be requested in the year the taxpayer adopts the new financial standards, and should they be allowed as automatic changes?

6. What related accounting method changes do taxpayers anticipate requesting that may appropriately be made on a single Form 3115?

7. If multiple changes are requested on a single Form 3115, should the taxpayer report a separate § 481 adjustment for each change and should those adjustments be netted and a single spread period applied?

8. What alternatives to filing a Form 3115 would reduce the burden of compliance?

9. What transition procedures may be helpful?

10. What additional procedural changes would be appropriate and helpful?

WHERE TO SEND COMMENTS

Comments must be submitted by July 26, 2017. Comments, identified by Notice 2017-17, may be submitted using one of the following methods:

- By Mail:
Internal Revenue Service
Attn: CC:PA:LPD:PR (Notice 2017-17)
Room 5203
P.O. Box 7602
Ben Franklin Station
Washington, D.C. 20044
- By Hand or Courier Delivery: Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to:
Courier's Desk
Internal Revenue Service
Attn: CC:PA:LPD:PR
(Notice 2017-17)
1111 Constitution Avenue, N.W.
Washington, D.C. 20224
- Electronic: Alternatively, persons may submit comments electronically to Notice.Comments@irs.counsel.treas.gov. Please include "Notice 2017-17" in the subject line of any electronic communications.

All submissions will be available for public inspection and copying in room 1621, 1111 Constitution Avenue, N.W., Washington, D.C., from 9 a.m. to 4 p.m.

PROPOSED REV. PROC. [2017-XX]

SECTION 1. PURPOSE

This revenue procedure provides procedures under § 446 of the Internal Revenue Code (Code) and § 1.446-1(e) of the Income Tax Regulations (Regulations) to obtain consent of the Commissioner of Internal Revenue (Commissioner) to change a method of accounting for recognizing income for federal income tax purposes when the change is a result of, or directly related to, adoption of the new financial accounting standards for recognizing revenue by the taxpayer and is made for the same taxable year as the adoption of the new financial accounting standards for recognizing revenue that were issued by the Financial Accounting Standards Board (FASB) and the International Accounting Standards Board (IASB). See FASB Update No. 2014-09,

"Revenue from Contracts with Customers (Topic 606)," and IASB International Financial Reporting Standard (IFRS) 15, "Revenue from Contracts with Customers."

SECTION 2. BACKGROUND

.01 Method of accounting generally.

(1) Section 446(a) of the Code and § 1.446-1(a)(1) of the Regulations provide that taxable income is computed under the method of accounting the taxpayer regularly uses to compute income in keeping the taxpayer's books.

(2) Section 1.446-1(a)(4) of the Regulations requires a taxpayer to maintain accounting records that include the taxpayer's regular books of account and other records and data necessary to support the entries on the taxpayer's books of account and on the taxpayer's return.

.02 Consent for a change in method of accounting. Section 446(e) of the Code and § 1.446-1(e)(2)(i) of the Regulations provide that, except as otherwise provided, a taxpayer must secure the consent of the Commissioner before changing a method of accounting for any item for federal income tax purposes.

.03 Accounting for income generally. Section 451(a) of the Code and § 1.451-1(a) of the Regulations provide that any item of gross income must be included in gross income in the year in which it was received by the taxpayer unless it is includible for a different year pursuant to the taxpayer's method of accounting.

.04 New revenue recognition standards.

(1) The FASB and the IASB have announced new financial accounting standards for recognizing revenue (new standards). See FASB Update No. 2014-09, IASB International Financial Reporting Standard (IFRS) 15, and section 3 of this revenue procedure.

(2) The new standards are effective for publicly-traded entities, certain not-for-profit entities, and certain employee benefit plans for annual reporting periods beginning after December 15, 2017. For all other entities, the new standards are effective for annual reporting periods beginning after December 15, 2018. Early adoption is allowed for reporting periods beginning after December 15, 2016. See FASB Update No. 2015-14, "Revenue

from Contracts with Customers (Topic 606), Deferral of the Effective Date.”

.05 Effect of new revenue recognition standards.

(1) The Internal Revenue Service (Service) anticipates that many taxpayers will request consent to change a method of accounting for one or more items of income as a result of, or directly related, to the adoption of the new revenue standards for the same taxable year that the new standards are adopted for financial accounting purposes.

(2) The Service must balance taxpayers’ need to comply with the new standards with the Service’s need to approve appropriate method changes.

SECTION 3. DEFINITIONS

.01 Change in Method of Accounting Definitions. The definitions in section 3 of Rev. Proc. 2015–13, 2015–5 I.R.B. 419, or any successor, apply for purposes of this revenue procedure.

.02 New Standards. “New standards” refers to the financial accounting standards for recognizing revenue that were issued in FASB Update No. 2014–09, “Revenue from Contracts with Customers (Topic 606),” and IASB International Financial Reporting Standard (IFRS) 15, “Revenue from Contracts with Customers,” as updated and revised hereafter.

.03 Qualifying Same-Year Method Change. A qualifying same-year method change is a change of method of accounting for recognizing income that is made for the same year as the year the taxpayer adopts the new standards and made as a result of, or directly related to, the adoption of those standards.

SECTION 4. SCOPE

This revenue procedure applies to taxpayers that adopt the new standards and that request the Commissioner’s consent, pursuant to § 446(e) of the Code and § 1.446–1(e)(3) of the Income Tax Reg-

ulations, to make a qualifying same-year method change.

SECTION 5. GENERAL APPLICATION PROCEDURES AND AUDIT PROTECTION

.01 Qualifying Same-Year Method Change under Existing Automatic Change Guidance.

A method change that is within the scope of section 4 of this revenue procedure that qualifies as an automatic change in the List of Automatic Changes (under Rev. Proc. 2016–29, 2016–21 I.R.B. 880, or any successor) and otherwise satisfies the requirements of paragraphs 5.01(1)(a)–(d) of Rev. Proc. 2015–13 (or any successor), must be implemented by applying the automatic change procedures in Section 6 of Rev. Proc. 2015–13 (or any successor) and the List of Automatic Changes.

.02 Qualifying Same-Year Method Change that Complies with Income Provisions of the Code or the Regulations.

(1) A method change that is within the scope of section 4 of this revenue procedure that is not described in section 5.01 of this revenue procedure, which satisfies the requirements of sections 5.01(1)(c) and (d) of Rev. Proc. 2015–13 (or any successor), and which complies with § 451 of the Code or other guidance, must be implemented by applying the automatic change procedures in section 6 of Rev. Proc. 2015–13 (or any successor). A taxpayer making a change under this section 5.02 must file a Form 3115, check the box for line 1(b), and write “Rev. Proc. 2017–XX” followed by the applicable income provision of the Code or Income Tax Regulations or the applicable relevant guidance. In addition, the taxpayer must attach a brief description of the change and why it satisfies the applicable income provision or guidance referenced in line 1(b) of the Form 3115.

(2) A taxpayer with one or more separate and distinct trade(s) or business(es),

within the meaning of § 1.446–1(d), that individually have (a) total assets of less than \$10 million as of the first day of the taxable year for which a change in method of accounting is requested, or (b) average annual gross receipts of \$10 million or less for the three preceding taxable years, as determined under § 1.263(a)–3(h)(3) (substituting “separate and distinct trade or business” for “taxpayer”), may make the change for each such separate and distinct trade or business on a cut-off basis. Accordingly, a § 481(a) adjustment is neither permitted nor required for each such separate and distinct trade or business. See section 2.07 of Rev. Proc. 2015–13.

(3) A § 481(a) adjustment must be computed for the year of change for all separate and distinct trades or businesses other than those for which paragraph 5.02(2) of this revenue procedure provides otherwise and for taxpayers for which paragraph 5.02(2) of this revenue procedure does not apply. See section 7.02 of Rev. Proc. 2015–13.

.03 Multiple Requests. Multiple requests to make qualifying same-year method changes may be made in one request.

SECTION 6. EFFECTIVE DATE

This revenue procedure is effective for taxable years ending on or after [INSERT DATE OF PUBLICATION OF FINAL REVENUE PROCEDURE].

SECTION 7. DRAFTING INFORMATION

The principal author of this revenue procedure is Charles Gorham of the Office of Associate Chief Counsel (Income Tax & Accounting). For further information regarding this revenue procedure, contact Mr. Gorham at (202) 317-7003 (not toll-free number), or Peter E. Ford, at (202) 317-7011 (not a toll-free number).

Part IV. Items of General Interest

Announcement 2017-03

Announcement and Report Concerning Advance Pricing Agreements

March 27, 2017

This Announcement is issued pursuant to § 521(b) of Pub. L. 106–170, the Ticket to Work and Work Incentives Improvement Act of 1999, which requires the Secretary of the Treasury to report annually to the public concerning advance pricing agreements (APAs) and the Advance Pricing and Mutual Agreement Program (APMA Program), formerly known as the Advance Pricing Agreement Program (APA Program). The first report covered calendar years 1991 through 1999. Subsequent reports covered each calendar year 2000 through 2015 separately. This eighteenth report describes the experience, structure, and activities of the APMA Program during calendar year 2016. It does not provide guidance regarding the application of the arm's length standard.

Part I of this report includes information on the structure, composition, and operation of the APMA Program; Part II presents statistical data; and Part III includes general descriptions of various elements of the APAs executed in 2016, including types of transactions covered, transfer pricing methods used, and completion time.

John C. C. Hughes

Acting Director, Advance Pricing and Mutual Agreement Program

Part I. The APMA Program – Structure, Composition, and Operation

[Pub. L. 106–170 § 521(b)(2)(A)]

In February of 2012, the former APA Program was moved from the Office of Chief Counsel to the Office of Transfer Pricing Operations within the Large Business and International Division of the IRS and combined with the U.S. Competent Authority staff responsible for transfer pricing cases, thereby forming the APMA Program.

After the formation of the APMA Program, the team that developed the IRS position in a bilateral or multilateral case and finalized the APA with the taxpayer also became responsible for discussing the case and obtaining an agreement with the treaty partner. This compression of functions into a single APA team has helped to eliminate inefficiencies and has decreased the amount of time it takes to reach resolution once a case is set for discussion with the treaty partner.

As of December 30, 2016, the APMA Program was comprised of 62 team leaders, 20 economists, and 10 senior managers organized into 10 groups (7 team leader groups and 3 economist groups). Each team leader group has responsibility for cases involving certain countries with one of the economist groups also taking responsibility of a country. Because of the large volume of cases with certain treaty partners, some countries are the responsibility of more than one group. The APMA Program's main office is located in Washington, DC, and it also has a significant presence in San Francisco and the Los Angeles area.

On August 31, 2015, new revenue procedures governing MAP and APA applications were published in 2015–35 I.R.B. on pages 236 and 263, respectively. Revenue Procedure (Rev. Proc.) 2015–41 provides guidance and instructions on filing APA requests as well as guidance and information on the administration of APAs. Rev. Proc. 2015–41 updates and supersedes Rev. Proc. 2006–9, 2006–1 C.B. 278, as modified by Rev. Proc. 2008–31, 2008–1 C.B. 1133, which is also superseded. Rev. Proc. 2015–40 provides procedures and guidance on requesting assistance from the U.S. Competent Authority where the taxpayer believes that the actions of the United States or a treaty country result or will result in the taxpayer being subject to taxation not in accordance with the applicable U.S. tax treaty. Rev. Proc. 2015–40 updates and supersedes Rev. Proc. 2006–54, 2006–2 C.B. 1035.

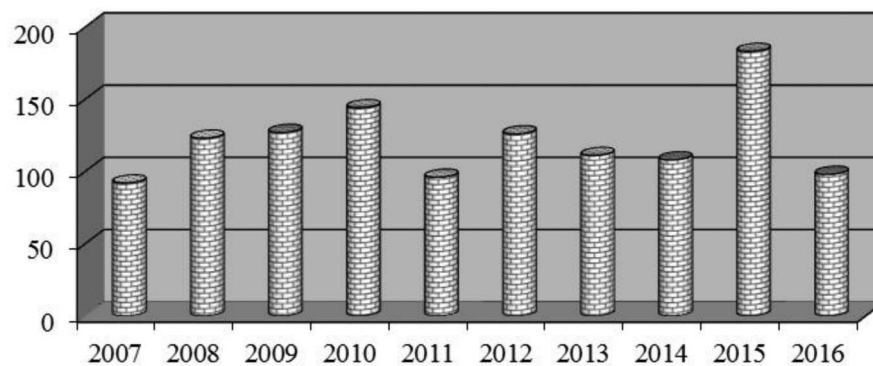
The model APA agreement, which was last significantly revised in 2009, is currently under review for future changes. The 2009 model appears in this report as Appendix 1. A list of primary APMA contacts is available at <https://www.irs.gov/businesses/corporations/apma-contacts>.

Part II. APMA Program Statistical Data
[Pub. L. 106–170 § 521(b)(2)(C)(i–viii)]

Table 1: APA Applications Filed
§ 521(b)(2)(C)(i)

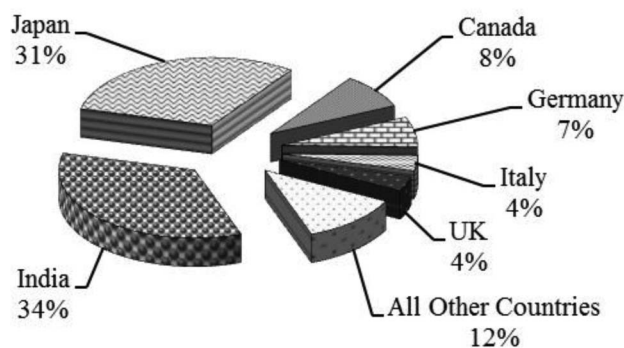
	Unilateral	Bilateral	Multilateral	Total
Filed 1991–1999 ⁴				401
Filed 2000–2015	542	1194	10	1746
Filed in 2016	14	84	0	98
Total Filed 1991–2016				2245

Applications Filed
2007–2016



The table above illustrates the number of complete applications filed per year. As of December 31, 2016, APMA had also received 17 user fee filings that were not yet accompanied by substantially complete APA applications, in addition to the 98 complete APA applications.

Bilateral APAs
Filed by Country 2016

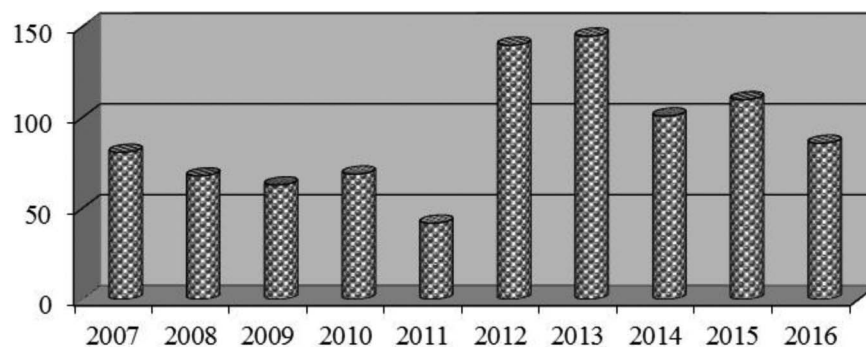


⁴The first APA Statutory Report, which compiled APA data from 1991–1999, did not report the cumulative number of applications for those years by submission type, so the cumulative totals cannot be reported in that manner.

Table 2: Executed and Pending APAs
§ 521(b)(2)(C)(ii–vi)

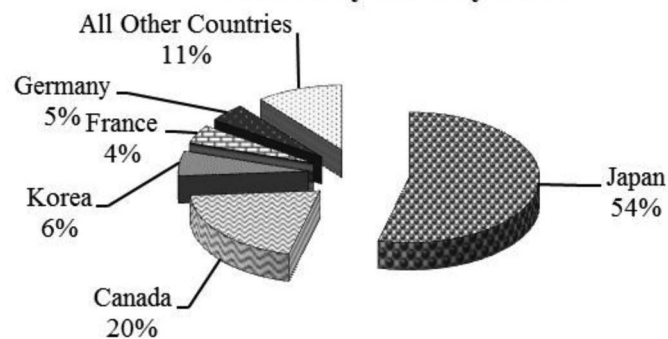
	Unilateral	Bilateral	Multilateral	Total
Total Executed 1991–2015	539	958	14	1511
Total Executed in 2016	21	65	0	86
Total Executed 1991–2016	560	1023	14	1597
Total Pending	67	322	9	398
<i>Renewals Executed in 2016</i>	<i>17</i>	<i>32</i>	<i>0</i>	<i>49</i>
<i>Renewals Pending</i>	<i>33</i>	<i>131</i>	<i>2</i>	<i>166</i>

**APAs Executed
2007-2016**



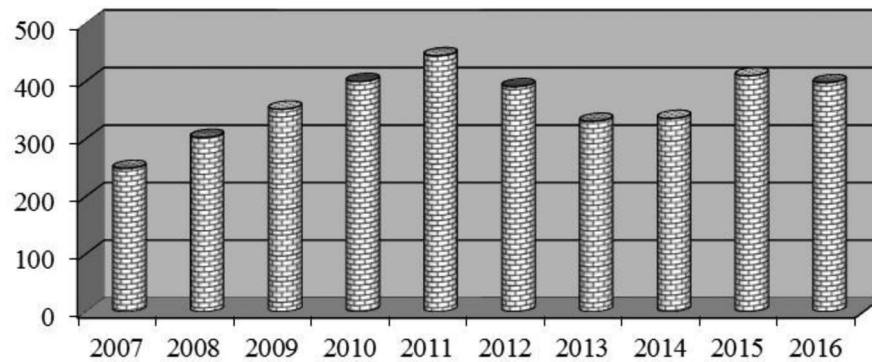
Of the 86 agreements executed in 2016, 41 percent were new APAs (*i.e.*, not a renewal of a prior APA). This was a slight increase from the 40 percent executed in 2015.

**Bilateral APAs
Executed by Country 2016**



As the chart above illustrates, nearly three quarters of the total number of bilateral APAs executed in 2016 involved the United States entering into mutual agreements with either Japan or Canada.

Pending APAs 2007-2016



The number of pending APAs dropped slightly from 2015 to 2016 with Japan and Canada continuing to account for almost half of all pending bilateral APAs.

Bilateral APAs Pending by Country 2016

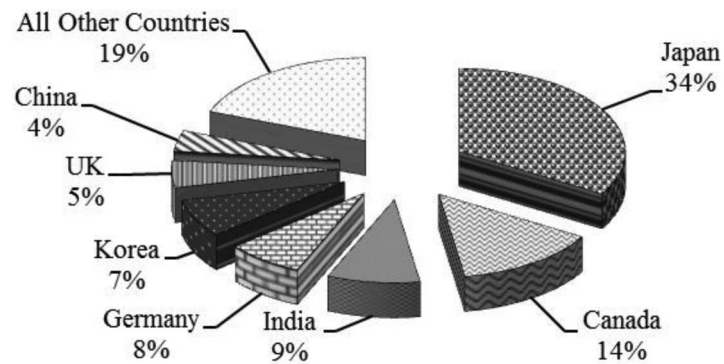


Table 3: APAs Revoked or Cancelled and Applications Withdrawn
§ 521(b)(2)(C)(vii)

	Unilateral	Bilateral	Multilateral	Total
Revoked or Cancelled in 2016	0	0	0	0
Total Revoked or Cancelled 1991–2016⁵				11
Applications Withdrawn in 2016	9	15	0	24
Total Applications Withdrawn 1991–2016⁶				224

Table 4: APAs Finalized or Renewed⁷ by Industry
§ 521(b)(2)(C)(viii)

Industry	
Manufacturing	40
Wholesale/Retail Trade	33
Services	6
All Other Industries	7

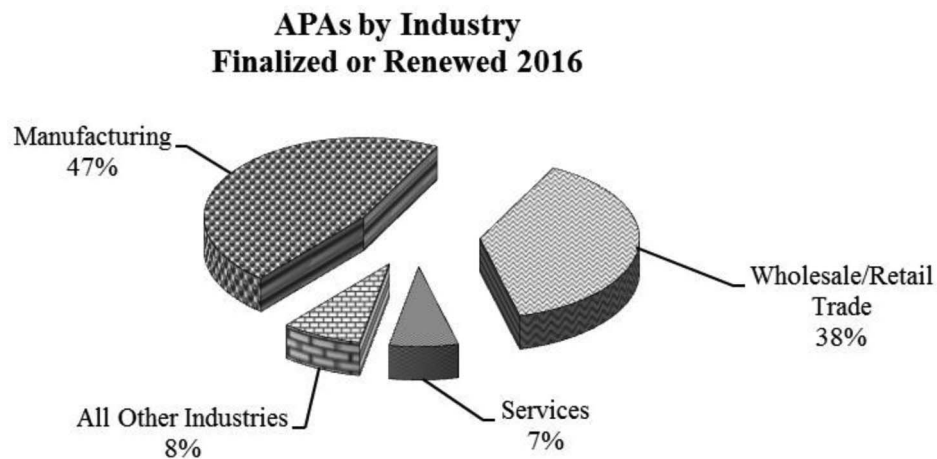


Table 4a: Manufacturing APAs Finalized or Renewed 2016

Wholesale/Retail Trade	
Computer and Electronic Products	7
Chemical	6
Transportation Equipment	6
Miscellaneous Manufacturing ⁸	9
All Other Types of Manufacturing	12

⁵The first APA Statutory Report, which compiled APA data from 1991–1999, did not report the cumulative number of applications for those years by submission type, so the cumulative totals cannot be reported in that manner.

⁶The first APA Statutory Report, which compiled APA data from 1991–1999, did not report the cumulative number of applications for those years by submission type, so the cumulative totals cannot be reported in that manner.

⁷APAs finalized or renewed are the same as APAs executed.

⁸Miscellaneous Manufacturing is NAICS code 339.

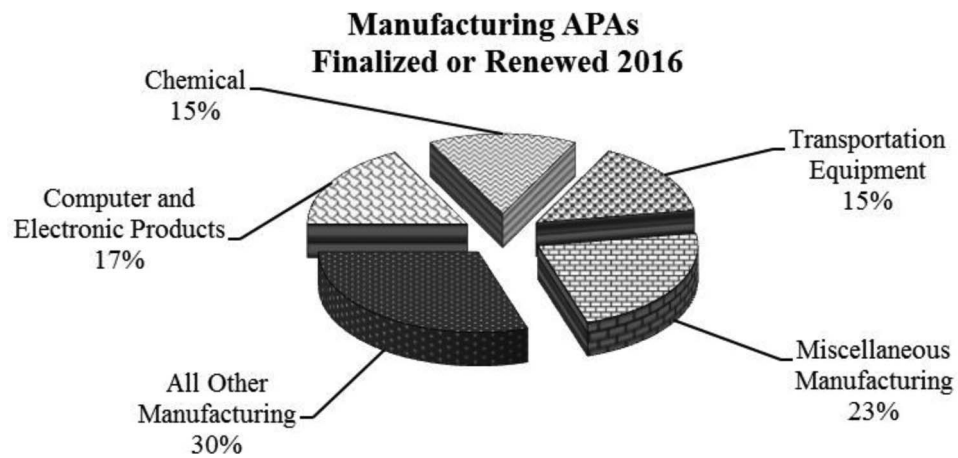
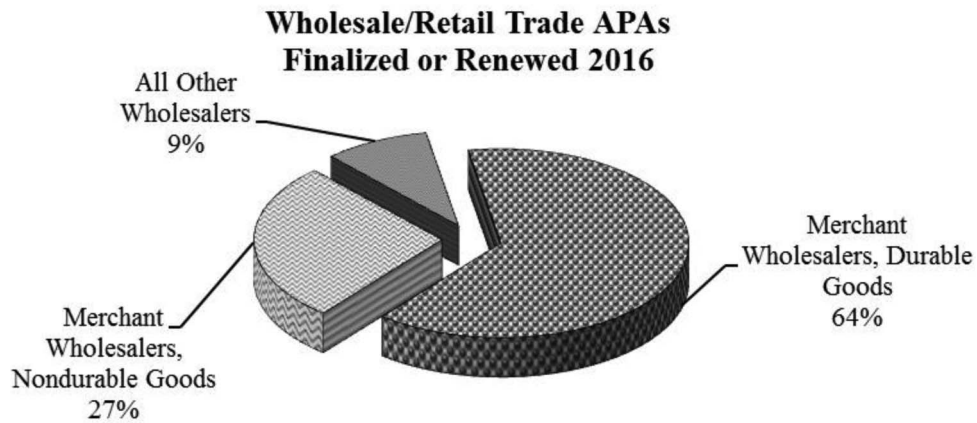


Table 4b: Wholesale/Retail Trade APAs Finalized or Renewed 2016

Wholesale/Retail Trade	
Merchant Wholesalers, Durable Goods	21
Merchant Wholesalers, Nondurable Goods	9
All Other Types of Other Wholesale/Retail Trade	3

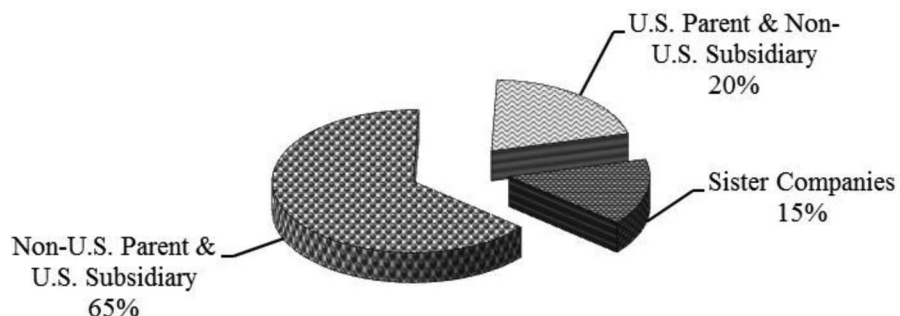


Part III. General Descriptions of APAs Executed in 2016

[Pub. L. 106–170 § 521(b)(2)(D) and (E)]

Nature of the Relationships § 521(b)(2)(D)(i)

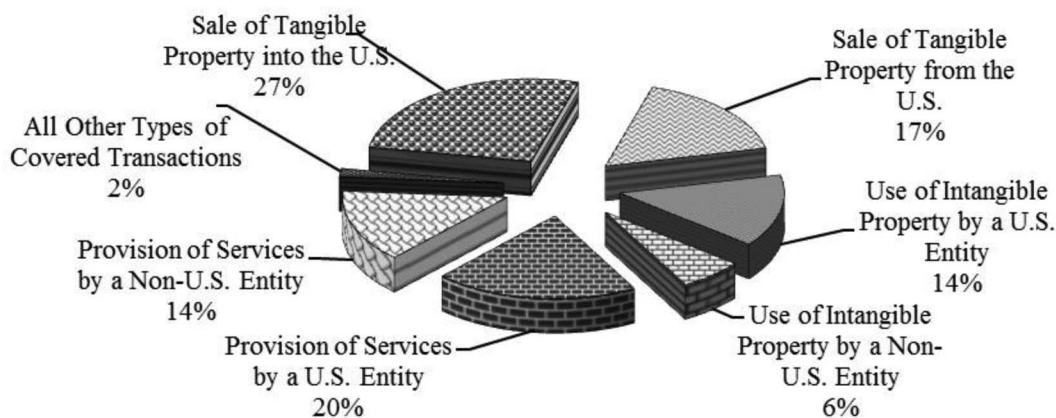
Relationships between Controlled Parties in 2016



As in prior years, more than half of the APAs executed in 2016 involved transactions between non-U.S. parents and U.S. subsidiaries.

Covered Transactions, Functions and Risks, and Tested Parties § 521(b)(2)(D)(ii–iii)

Types of Covered Transactions in 2016

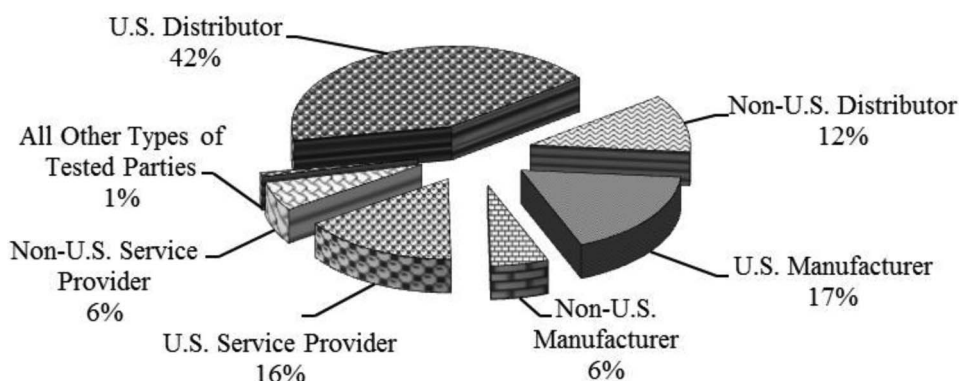


Although the majority of transactions⁹ covered in APAs executed in 2016 involve the sale of tangible goods and the provision of services, the IRS also has successfully completed numerous APAs involving the use of intangible property. While transactions involving intangibles may be more challenging and represent a smaller percentage of the covered transactions in 2016 (20 percent), the IRS continues to seek opportunities to work with taxpayers and treaty partners to provide prospective certainty for such transactions wherever appropriate.

In the majority of APAs, the covered transactions involve numerous business functions and risks. For instance, with respect to functions, APAs involving manufactured products typically involve a controlled group that conducts research and development (R&D), engages in product design and engineering, manufactures the product, markets and distributes the product, and performs support functions such as legal, finance, and human resources services. Regarding risks, the controlled group may assume a variety of risks including market risks, R&D risks, financial risks, credit and collection risks, product liability risks, and general business risks. In the APA evaluation process, a significant amount of time and effort is devoted to understanding how the functions and risks are allocated amongst the controlled group of companies that are party to the covered transactions. Generally, for methods requiring selection of a tested party, the tested party that is chosen will be the least complex of the controlled taxpayers.

⁹APAs often cover more than one type of transaction.

Types of Tested Parties in 2016



75 percent of the tested parties in 2016¹⁰ were U.S. distributors, U.S. manufacturers, or U.S. service providers.

Transfer Pricing Methods Used § 521(b)(2)(D)(iv)

Consistent with prior years, in 2016, the primary transfer pricing method (TPM) used for both the sale of tangible property and the use of intangible property was the comparable profits method/transactional net margin method (CPM/TNMM). The CPM/TNMM was used for 89 percent of transfers of tangible and intangible property while all other methods combined accounted for the other 11 percent of such transactions.

For covered transfers of tangible and intangible property that used the CPM/TNMM, an operating margin (OM) continues to be the most common profit level indicator (PLI) used to benchmark results. It was utilized 67 percent of the time. Other PLIs, such as the Berry Ratio and Return on Assets or Capital Employed, made up the other 33 percent. As used here, OM means the ratio of operating profits to sales,¹¹ and “Berry Ratio” means the ratio of gross profit to operating expenses.¹² The majority of services transactions (76 percent) also used the CPM/TNMM, and OM was the most common PLI (used 43 percent of the time).¹³

Sources of Comparables, Comparables Selection Criteria, and Nature of Adjustments to Comparables or Tested Party Data § 521(b)(2)(D)(v–vii)

For the APAs executed in 2016 that used external comparable data in the analysis, the most widely used data source for comparables was Standard and Poor’s Compustat/Capital IQ database. Other sources were also used in appropriate cases (*e.g.*, where the tested party was not the U.S. entity or transaction-based methods were applied). The other more commonly used databases are listed in the table below.

Table 5: Sources of Comparable Data

Avention (formerly known as OneSource)	Mergent
Bloomberg	Orbis
Disclosure	Recap
Global Vantage	RoyaltySource
ktMINE	RoyaltyStat
LoanConnector	Worldscope

In making comparability adjustments, the standard balance sheet adjustments identified in Treas. Reg. § 1.482–1(d) and § 1.482–5(c), including adjustments for differing amounts of payables, receivables, and inventory, were made in the majority of cases. Where appropriate, adjustments for different accounting practices were made to convert from LIFO to FIFO inventory accounting, and a small number of cases also involved the accounting reclassification of expenses, *e.g.*, from COGS to operating expenses.

¹⁰Not all APAs executed in 2016 involved a tested party.

¹¹See Treas. Reg. § 1.482–5(b)(4)(ii)(A).

¹²See Treas. Reg. § 1.482–5(b)(4)(ii)(B).

¹³In 2016, the majority of the APAs that covered services transactions also included tangible/intangible transactions and were not tested under a separate PLI.

Ranges, Targets, and Adjustment Mechanisms
§ 521(b)(2)(D)(viii–ix)

The majority of transactions covered in APAs target an interquartile range as described in Treas. Reg. § 1.482–1(e)(2)(iii)(C). Where the transaction involves a royalty payment for the use of intangible property, both specific royalty rates and ranges have been used. In some cases where the covered transaction is the payment of a royalty based solely on external royalty agreements, a secondary method, *e.g.*, a test of the post-royalty operating margin, has also been used. The testing periods of the APAs executed in 2016 were either: (1) a single year, (2) the term of the APA only, or (3) the term of the APA plus rollback years.

APAs executed in 2016 included a number of mechanisms for making adjustments to tested party results when the results fall outside the range or do not match the point required by the APA. The following are examples of the mechanisms used: an adjustment bringing the tested party’s results to the closer edge of the range applied to the results of a single year; an adjustment to the closer edge of the range applied to the results over the APA term; an adjustment to the specified point or royalty rate; or an adjustment to the median of the range for a single year.

Critical Assumptions
§ 521(b)(2)(D)(v)

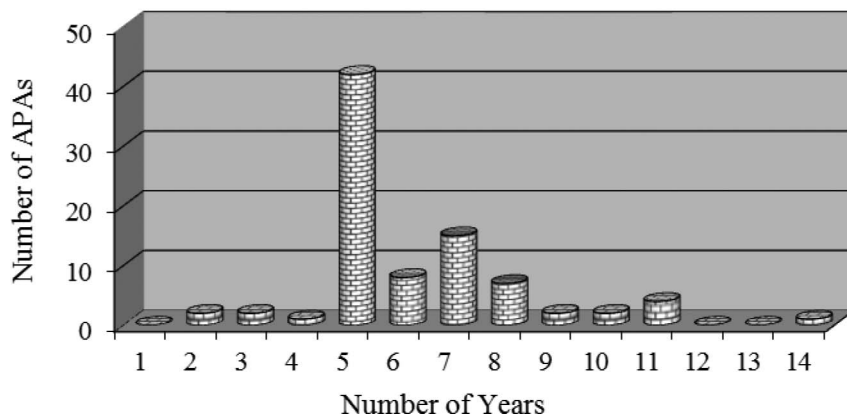
The model APA used by the IRS (included as Appendix 1 of this report) includes a standard critical assumption that there will be no material changes to the taxpayer’s business or to its tax or financial accounting practices during the APA term. Each of the APAs executed in 2016 included this standard critical assumption. A few bilateral cases have included critical assumptions tied either to the taxpayer’s profitability in a certain year or over the term of the APA, or to the amount of non-covered transactions as a percentage of the taxpayer’s revenue. Pursuant to § 7.06(3) of Rev. Proc. 2015–41, 2015 I.R.B. 263, APMA will cancel an APA in the event of a failure of a critical assumption unless the parties agree to revise the APA.

Term Lengths of APAs Executed in 2016
§ 521(b)(2)(D)(x)

Table 6: Term Lengths of APAs Executed in 2016

Term Length (years)	Number of APAs
2	2
3	2
4	1
5	52
6	8
7	15
8	7
9	2
10	2
11	4
12	0
13	0
14	1
Average	6

Term Length of APAs Executed in 2016



As described in § 3.03(1) of Rev. Proc. 2015–41, taxpayers should request an APA term that would cover at least 5 prospective years and may also request that the APA be “rolled back” to cover one or more earlier taxable years, although the appropriate APA term is decided on a case-by-case basis. Of the APAs executed in 2016, only 20 percent included rollback years. A substantial number of those APAs with terms of greater than 5 years were submitted as a request for a 5-year term, and the additional years were agreed to between the taxpayer and the IRS (or, in the case of a bilateral APA, between the IRS and the foreign government upon the taxpayer’s request) to ensure a reasonable amount of prospectivity in the APA term.

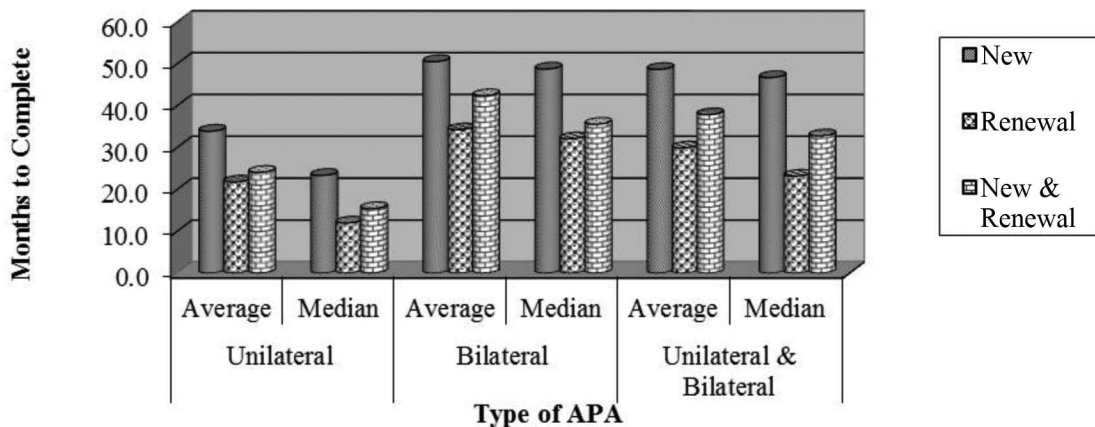
Amount of Time Taken to Complete New and Renewal APAs

§ 521(b)(2)(E)

Table 7: Months to Complete New and Renewal APAs Executed in 2016

	Unilateral		Bilateral		Unilateral & Bilateral	
	Average	Median	Average	Median	Average	Median
New	33.9	23.4	50.5	48.8	48.7	46.7
Renewal	21.8	12.0	34.2	32.1	29.9	23.2
New & Renewal	24.1	15.4	42.4	35.6	37.9	32.8

Months to Complete New and Renewal APAs Executed in 2016



The median time required to complete an APA in 2016 increased slightly from 31.9 months in 2015 to 32.8 months in 2016.

Efforts to Ensure Compliance with APAs

§ 521(b)(2)(F)

As described in § 7.02 (1) of Rev. Proc. 2015–41, taxpayers are required to file annual reports to demonstrate compliance with the terms and conditions of their APA. The filing and review of these annual reports are critical parts of the APA process. Through annual report review, the APMA Program monitors taxpayer compliance with APAs on a contemporaneous basis. Annual report review also provides current information on the success or problems associated with the various TPMs adopted in the APA process.

Each annual report received by the APMA Program is assigned to a designated APMA team leader. Whenever possible, annual report reviews are assigned to the team leader who worked the case, or another staff member who is already familiar with the relevant facts and terms of the APA. Other team leaders and economists may assist the assigned staff member as well. The annual report is also sent to the field personnel with exam jurisdiction over the taxpayer. The field personnel conduct a compliance review and coordinate with APMA personnel to resolve any questions or problems that might arise.

Nature of Documentation Required in Annual Report

§ 521(b)(2)(D)(xi)

APA agreements require taxpayers to file timely and complete annual reports describing their operations and demonstrating compliance with the APA's terms and conditions. Not every annual report will include each of the items listed in the following table¹⁴; they are required where the facts demonstrate a need for such documentation.

¹⁴The source of this list is the 2009 APA Model Agreement.

1.	Statement regarding all material differences between Taxpayer's business operations during APA year and description of Taxpayer's business operations contained in Taxpayer's APA request. If there are no material differences, a statement to that effect.
2.	Statement concerning all material changes in Taxpayer's accounting methods and classifications, and methods of estimation, from those described or used in Taxpayer's request for the APA. If there has been no material change in accounting methods and classifications or methods of estimation, a statement to that effect.
3.	Any change to the taxpayer notice information.
4.	Description of any failure to meet critical assumptions. If there has been none, a statement to that effect.
5.	Statement identifying whether or not any material information submitted while the APA request was pending is discovered to be false, incorrect, or incomplete.
6.	The amount, reason for, and financial analysis of any compensating adjustment, for the APA year, including but not limited to: the amounts paid or received by each affected entity; the character (such as capital or ordinary expense) and country source of the funds transferred, and the specific line item(s) of any affected U.S. tax return; and any change to any entity classification for federal income tax purposes of any member of Taxpayer's group that is relevant to the APA.
7.	The amounts, description, reason for, and financial analysis of any book-tax difference relevant to the TPM for the APA year, as reflected on Schedule M-1 or Schedule M-3 of the U.S. return for the APA year.
8.	Statement regarding whether Taxpayer contemplates requesting, or has requested, to renew, modify, or cancel the APA.
9.	Financial statements and any necessary account detail to show compliance with the TPM, with a copy of the opinion from an independent certified public accountant or other documentation required by paragraph 5(f) of the APA.
10.	Financial analysis demonstrating Taxpayer's compliance with TPM.
11.	Organizational chart.
12.	A copy of the APA and any amendment.
13.	A penalty of perjury statement.

Approaches for Sharing of Currency or Other Risks
§ 521(b)(2)(D)(xii)

In appropriate cases, APAs may provide specific approaches for dealing with currency risk, such as adjustment mechanisms and/or critical assumptions.

APPENDIX 1– Model APA (based on Rev. Proc. 2006–9)
[§ 521(b)(2)(B)]

ADVANCE PRICING AGREEMENT

between

[Insert Taxpayer’s Name]

and

THE INTERNAL REVENUE SERVICE

PARTIES

The Parties to this Advance Pricing Agreement (APA) are the Internal Revenue Service (IRS) and [Insert Taxpayer’s Name], EIN _____.

RECITALS

[Insert Taxpayer Name] is the common parent of an affiliated group filing consolidated U.S. tax returns (collectively referred to as “Taxpayer”), and is entering into this APA on behalf of itself and other members of its consolidated group.

Taxpayer’s principal place of business is [City, State]. [Insert general description of taxpayer and other relevant parties].

This APA contains the Parties’ agreement on the best method for determining arm’s-length prices of the Covered Transactions under I.R.C. section 482, the Treasury Regulations thereunder, and any applicable tax treaties.

[If renewal, add] Taxpayer and IRS previously entered into an APA covering taxable years ending _____ to _____, executed on _____.

AGREEMENT

The Parties agree as follows:

1. *Covered Transactions.* This APA applies to the Covered Transactions, as defined in Appendix A.
2. *Transfer Pricing Method.* Appendix A sets forth the Transfer Pricing Method (TPM) for the Covered Transactions.
3. *Term.* This APA applies to the APA Term, as defined in Appendix A.
4. *Operation.*
 - a. Revenue Procedure 2006-9 governs the interpretation, legal effect, and administration of this APA.
 - b. Nonfactual oral and written representations, within the meaning of sections 10.04 and 10.05 of Revenue Procedure 2006–9 (including any proposals to use particular TPMs), made in conjunction with the APA Request constitute statements made in compromise negotiations within the meaning of Rule 408 of the Federal Rules of Evidence.
5. *Compliance.*
 - a. Taxpayer must report its taxable income in an amount that is consistent with Appendix A and all other requirements of this APA on its timely filed U.S. Return. However, if Taxpayer’s timely filed U.S. Return for any taxable year covered by this APA (APA Year) is filed prior to, or no later than 60 days after, the effective date of this APA, then Taxpayer must report its taxable income for that APA Year in an amount that is consistent with Appendix A and all other requirements of this APA either on the original U.S. Return or on an amended U.S. Return filed no later than 120 days after the effective date of this APA, or through such other means as may be specified herein.
 - b. {Use or edit the following when U.S. Group or Foreign Group contains more than one member.} [This APA addresses the arm’s-length nature of prices charged or received in the aggregate between Taxpayer and Foreign Participants with respect to the Covered Transactions. Except as explicitly provided, this APA does not address and does not bind the IRS with respect to prices charged or received, or the relative amounts of income or loss realized, by particular legal entities that are members of U.S. Group or that are members of Foreign Group.]
 - c. For each APA Year, if Taxpayer complies with the terms and conditions of this APA, then the IRS will not make or propose any allocation or adjustment under I.R.C. section 482 to the amounts charged in the aggregate between Taxpayer and Foreign Participant[s] with respect to the Covered Transactions.
 - d. If Taxpayer does not comply with the terms and conditions of this APA, then the IRS may:
 - i. enforce the terms and conditions of this APA and make or propose allocations or adjustments under I.R.C. section 482 consistent with this APA;
 - ii. cancel or revoke this APA under section 11.06 of Revenue Procedure 2006–9; or

iii. revise this APA, if the Parties agree.

e. Taxpayer must timely file an Annual Report (an original and four copies) for each APA Year in accordance with Appendix C and section 11.01 of Revenue Procedure 2006–9. Taxpayer must file the Annual Report for all APA Years through the APA Year ending [insert year] by [insert date]. Taxpayer must file the Annual Report for each subsequent APA Year by [insert month and day] immediately following the close of that APA Year. (If any date falls on a weekend or holiday, the Annual Report shall be due on the next date that is not a weekend or holiday.) The IRS may request additional information reasonably necessary to clarify or complete the Annual Report. Taxpayer will provide such requested information within 30 days. Additional time may be allowed for good cause.

f. The IRS will determine whether Taxpayer has complied with this APA based on Taxpayer’s U.S. Returns, the Financial Statements, and other APA Records, for the APA Term and any other year necessary to verify compliance. For Taxpayer to comply with this APA, {use the following or an alternative} an independent certified public accountant must render an opinion that Taxpayer’s Financial Statements present fairly, in all material respects, Taxpayer’s financial position under U.S. GAAP.

g. In accordance with section 11.04 of Revenue Procedure 2006–9, Taxpayer will (1) maintain the APA Records, and (2) make them available to the IRS in connection with an examination under section 11.03. Compliance with this subparagraph constitutes compliance with the record-maintenance provisions of I.R.C. sections 6038A and 6038C for the Covered Transactions for any taxable year during the APA Term.

h. The True Taxable Income within the meaning of Treasury Regulations sections 1.482–1(a)(1) and (i)(9) of a member of an affiliated group filing a U.S. consolidated return will be determined under the I.R.C. section 1502 Treasury Regulations.

i. {Optional for US Parent Signatories} To the extent that Taxpayer’s compliance with this APA depends on certain acts of Foreign Group members, Taxpayer will ensure that each Foreign Group member will perform such acts.

6. *Critical Assumptions.* This APA’s critical assumptions, within the meaning of Revenue Procedure 2006–9, section 4.05, appear in Appendix B. If any critical assumption has not been met, then Revenue Procedure 2006–9, section 11.06, governs.

7. *Disclosure.* This APA, and any background information related to this APA or the APA Request, are: (1) considered “return information” under I.R.C. section 6103(b)(2)(C); and (2) not subject to public inspection as a “written determination” under I.R.C. section 6110(b)(1). Section 521(b) of Pub. L. 106–170 provides that the Secretary of the Treasury must prepare a report for public disclosure that includes certain specifically designated information concerning all APAs, including this APA, in a form that does not reveal taxpayers’ identities, trade secrets, and proprietary or confidential business or financial information.

8. *Disputes.* If a dispute arises concerning the interpretation of this APA, the Parties will seek a resolution by the Director of the Advance Pricing and Mutual Agreement Program, to the extent reasonably practicable, before seeking alternative remedies.

9. *Materiality.* In this APA the terms “material” and “materially” will be interpreted consistently with the definition of “material facts” in Revenue Procedure 2006–9, section 11.06(4).

10. *Section Captions.* This APA’s section captions, which appear in *italics*, are for convenience and reference only. The captions do not affect in any way the interpretation or application of this APA.

11. *Terms and Definitions.* Unless otherwise specified, terms in the plural include the singular and vice versa. Appendix D contains definitions for capitalized terms not elsewhere defined in this APA.

12. *Entire Agreement and Severability.* This APA is the complete statement of the Parties’ agreement. The Parties will sever, delete, or reform any invalid or unenforceable provision in this APA to approximate the Parties’ intent as nearly as possible.

13. *Successor in Interest.* This APA binds, and inures to the benefit of, any successor in interest to Taxpayer.

14. *Notice.* Any notices required by this APA or Revenue Procedure 2006–9 must be in writing. Taxpayer will send notices to the IRS at the address and in the manner set forth in Revenue Procedure 2006–9, section 4.11. The IRS will send notices to:

Taxpayer Corporation Attn: Jane Doe, Sr. Vice President (Taxes) 1000 Any Road Any City, USA 10000 (phone: _____)
--

15. *Effective Date and Counterparts.* This APA is effective starting on the date, or later date of the dates, upon which all Parties execute this APA. The Parties may execute this APA in counterparts, with each counterpart constituting an original.

WITNESS,

The Parties have executed this APA on the dates below.

[Taxpayer Name in all caps]

By: _____

Jane Doe
Sr. Vice President (Taxes)

Date: _____, 201__

IRS

By: _____

John C. C. Hughes
Acting Director, Advance Pricing and Mutual
Agreement Program

Date: _____, 201__

APPENDIX A

COVERED TRANSACTIONS AND TRANSFER PRICING METHOD (TPM)

1. Covered Transactions.

[Define the Covered Transactions.]

2. APA Term.

This APA applies to Taxpayer's taxable years ending _____ through _____ (APA Term).

3. TPM.

{Note: If appropriate, adapt language from the following examples.}

[The Tested Party is _____.]

● CUP Method

The TPM is the comparable uncontrolled price (CUP) method. The Arm's Length Range of the price charged for _____ is between _____ and _____ per unit.

● CUT Method

The TPM is the CUT Method. The Arm's Length Range of the royalty charged for the license of _____ is between _____% and _____% of [Taxpayer's, Foreign Participants', or other specified party's] Net Sales Revenue. [Insert definition of net sales revenue or other royalty base.]

● Resale Price Method (RPM)

The TPM is the resale price method (RPM). The Tested Party's Gross Margin for any APA Year is defined as follows: the Tested Party's gross profit divided by its sales revenue (as those terms are defined in Treasury Regulations sections 1.482-5(d)(1) and (2)) for that APA Year. The Arm's Length Range is between _____% and _____%, and the Median of the Arm's Length Range is _____%.

● Cost Plus Method

The TPM is the cost plus method. The Tested Party's Cost Plus Markup is defined as follows for any APA Year: the Tested Party's ratio of gross profit to production costs (as those terms are defined in Treasury Regulations sections 1.482-3(d)(1) and (2)) for that APA Year. The Arm's Length Range is between _____% and _____%, and the Median of the Arm's Length Range is _____%.

● CPM with Berry Ratio PLI

The TPM is the comparable profits method (CPM). The profit level indicator is a Berry Ratio. The Tested Party's Berry Ratio is defined as follows for any APA Year: the Tested Party's gross profit divided by its operating expenses (as those terms are defined in Treasury Regulations sections 1.482-5(d)(2) and (3)) for that APA Year. The Arm's Length Range is between _____ and _____, and the Median of the Arm's Length Range is _____.

● CPM using an Operating Margin PLI

The TPM is the comparable profits method (CPM). The profit level indicator is an operating margin. The Tested Party's Operating Margin is defined as follows for any APA Year: the Tested Party's operating profit divided by its sales revenue (as those terms are defined in Treasury Regulations section 1.482-5(d)(1) and (4)) for that APA Year. The Arm's Length Range is between _____% and _____%, and the Median of the Arm's Length Range is _____%.

● CPM using a Three-year Rolling Average Operating Margin PLI

The TPM is the comparable profits method (CPM). The profit level indicator is an operating margin. The Tested Party's Three-Year Rolling Average operating margin is defined as follows for any APA Year: the sum of the Tested Party's operating profit (within the meaning of Treasury Regulation section 1.482-5(d)(4) for that APA Year and the two preceding years, divided by the sum of its sales revenue (within the meaning of Treasury Regulation section 1.482-5(d)(1)) for that APA Year and the two preceding years. The Arm's Length Range is between _____% and _____%, and the Median of the Arm's Length Range is _____%.

● Residual Profit Split Method

The TPM is the residual profit split method. *[Insert description of routine profit level determinations and residual profit-split mechanism].*

[Insert additional provisions as needed.]

4. Application of TPM.

For any APA Year, if the results of Taxpayer's actual transactions produce a [price per unit, royalty rate for the Covered Transactions] [or] [Gross Margin, Cost Plus Markup, Berry Ratio, Operating Margin, Three-Year Rolling Average Operating Margin for the Tested Party] within the Arm's Length Range, then the amounts reported on Taxpayer's U.S. Return must clearly reflect such results.

For any APA year, if the results of Taxpayer's actual transactions produce a [price per unit, royalty rate] [or] [Gross Margin, Cost Plus Markup, Berry Ratio, Operating Margin, Three-Year Rolling Average Operating Margin for the Tested Party] outside the Arm's Length Range, then amounts reported on Taxpayer's U.S. Return must clearly reflect an adjustment that brings the [price per unit, royalty rate] [or] [Tested Party's Gross Margin, Cost Plus Markup, Berry Ratio, Operating Margin, Three-Year Rolling Average Operating Margin] to the Median.

For purposes of this Appendix A, the "results of Taxpayer's actual transactions" means the results reflected in Taxpayer's and Tested Party's books and records as computed under U.S. GAAP *[insert another relevant accounting standard if applicable]*, with the following adjustments:

(a) [The fair value of stock-based compensation as disclosed in the Tested Party's audited financial statements shall be treated as an operating expense]; and

(b) To the extent that the results in any prior APA Year are relevant (for example, to compute a multi-year average), such results shall be adjusted to reflect the amount of any adjustment made for that prior APA Year under this Appendix A.

5. APA Revenue Procedure Treatment

If Taxpayer makes an adjustment under paragraph 4 of this Appendix A (a "primary adjustment"), Taxpayer and its related foreign entity may elect APA Revenue Procedure Treatment in accordance with section 11.02(3) of Revenue Procedure 2006-9 and avoid the possible adverse tax consequences of a secondary adjustment that would otherwise follow the primary adjustment.

[Insert additional provisions as needed.]

APPENDIX B
CRITICAL ASSUMPTIONS

This APA's critical assumptions are:

1. The business activities, functions performed, risks assumed, assets employed, and financial and tax accounting methods and classifications [and methods of estimation] of Taxpayer in relation to the Covered Transactions will remain materially the same as described or used in Taxpayer's APA Request. A mere change in business results will not be a material change.

[Insert additional provisions as needed.]

APPENDIX C

APA RECORDS AND ANNUAL REPORT

APA RECORDS

The APA Records will consist of all documents listed below for inclusion in the Annual Report, as well as all documents, notes, work papers, records, or other writings that support the information provided in such documents.

ANNUAL REPORT

The Annual Report (and each of the four copies required by paragraph 5(e) of this APA) will include:

1. Two copies of a properly completed APA Annual Report Summary in the form of Appendix E to this APA, one copy of the form bound with, and one copy provided separately from, the rest of the Annual Report.
2. A table of contents, organized as follows:
3. Statements that fully identify, describe, analyze, and explain:
 - a. All material differences between the U.S. Group's business operations (including functions, risks assumed, markets, contractual terms, economic conditions, property, services, and assets employed) during the APA Year from the business operations described in the APA Request. If there have been no material differences, the Annual Report will include a statement to that effect.
 - b. All material differences between the U.S. Group's accounting methods and classifications, and methods of estimation used during the APA Year, from those described or used in the APA Request. If any change was made to conform to changes in U.S. GAAP (or other relevant accounting standards) Taxpayer will specifically identify the change. If there has been no material change in accounting methods and classifications or methods of estimation, the Annual Report will include a statement to that effect.
 - c. Any change to the Taxpayer notice information in paragraph 14 of this APA.
 - d. Any failure to meet any critical assumption. If there has been no failure, the Annual Report will include a statement to that effect.
 - e. Whether or not material information submitted while the APA Request was pending is discovered to be false, incorrect, or incomplete.
 - f. Any change to any entity classification for federal income tax purposes (including any change that causes an entity to be disregarded for federal income tax purposes) of any Worldwide Group member that is a party to the Covered Transactions or is otherwise relevant to the TPM.
 - g. The amount, reason for, and financial analysis of (1) any primary adjustments made under Appendix A for the APA Year; and (2) any (a) secondary adjustments that follow such primary adjustments or (b) accounts receivable that Taxpayer establishes, in lieu of secondary adjustments, by electing APA Revenue Procedure Treatment pursuant to paragraph 5 of Appendix A and Revenue Procedure 2006-9, section 11.02(3), for the APA Year, including but not limited to:
 - i. the amounts due or owed, and paid or received by each affected entity;
 - ii. the character (such as capital, ordinary, income, expense) and country source of the funds transferred, and the specific affected line item(s) of any affected U.S. Return;
 - iii. the date(s) and means by which the payments are or will be made; and
 - iv. whether or not APA Revenue Procedure was elected pursuant to paragraph 5 of Appendix A and Revenue Procedure 2006-9, section 11.02(3).
 - h. The amounts, description, reason for, and financial analysis of any book-tax difference relevant to the TPM for the APA Year, as reflected on Schedule M-1 or Schedule M-3 of the U.S. Return for the APA Year.
 - i. Whether Taxpayer contemplates requesting, or has requested, to renew, modify, or cancel the APA.
4. The Financial Statements, and any necessary account detail to show compliance with the TPM, including consolidating financial statements, segmented financial data, records from the general ledger, or similar information if the assets, liabilities, income, or expenses relevant to showing compliance with the TPM are a subset of the assets, liabilities, income, or expenses presented in the Financial Statements.
5. *{Use the following or the alternative prescribed by paragraph 5(f) of this APA:}* A copy of the independent certified public accountant's opinion required by paragraph 5(f) of this APA.
6. A financial analysis that reflects Taxpayer's TPM calculations for the APA Year. The calculations must reconcile with and reference the information required under item 4 above in sufficient account detail to allow the IRS to determine whether Taxpayer has complied with the TPM.
7. An organizational chart for the Worldwide Group, revised annually to reflect all ownership or structural changes of entities that are parties to the Covered Transactions or are otherwise relevant to the TPM.

8. A copy of the APA and any amendment.
9. A penalty of perjury statement, executed in accordance with Revenue Procedure 2006–9, section 11.01(6) and (7).

APPENDIX D

DEFINITIONS

The following definitions control for all purposes of this APA. The definitions appear alphabetically below:

Term	Definition
Annual Report	A report within the meaning of Revenue Procedure 2006–9, section 11.01.
APA	This Advance Pricing Agreement, which is an “advance pricing agreement” within the meaning of Revenue Procedure 2006–9, section 2.04.
APA Records	The records specified in Appendix C.
APA Request	Taxpayer’s request for this APA dated _____, including any amendments or supplemental or additional information thereto.
APA Year	This term is defined in paragraph 5(a) of this APA.
Covered Transaction(s)	This term is defined in Appendix A.
Financial Statements	Financial statements prepared in accordance with U.S. GAAP and stated in U.S. dollars.
Foreign Group	Worldwide Group members that are not U.S. persons.
Foreign Participants	[name the foreign entities involved in Covered Transactions].
I.R.C.	The Internal Revenue Code of 1986, 26 U.S.C., as amended.
Pub. L. 106–170	The Ticket to Work and Work Incentives Improvement Act of 1999.
Revenue Procedure 2006–9	Rev. Proc. 2006–9, 2006–1 C.B. 278.
Transfer Pricing Method (TPM)	A transfer pricing method within the meaning of Treasury Regulation section 1.482–1(b) and Revenue Procedure 2006–9, section 2.04.
U.S. GAAP	U.S. generally-accepted accounting principles.
U.S. Group	Worldwide Group members that are U.S. persons.
U.S. Return	For each taxable year, the “returns with respect to income taxes under subtitle A” that Taxpayer must “make” in accordance with I.R.C. section 6012. <i>{Or substitute for partnership: For each taxable year, the “return” that Taxpayer must “make” in accordance with I.R.C. section 6031.}</i>
Worldwide Group	Taxpayer and all organizations, trades, businesses, entities, or branches (whether or not incorporated, organized in the United States, or affiliated) owned or controlled directly or indirectly by the same interests.

APPENDIX E

APA ANNUAL REPORT SUMMARY FORM

The APA Annual Report Summary on the next page is a required APA Record. The APA Team Leader supplies some of the information requested on the form. Taxpayer is to supply the remaining information requested by the form and submit the form as part of its Annual Report.

APA Annual Report SUMMARY	Department of the Treasury— Internal Revenue Service Large Business and International Division Transfer Pricing Operations Advance Pricing and Mutual Agreement Program	APA No. _____ Team Leader _____ Economist _____ Intl Examiner _____
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APA Information	Taxpayer Name: _____ Taxpayer EIN: _____ NAICS: _____ APA Term: Taxable years ending _____ to _____ Original APA ☐ Renewal APA ☐ Annual Report due dates: _____, 201__ for all APA Years through APA Year ending in 200__; for each APA Year thereafter, on _____ [month and day] immediately following the close of the APA Year Principal foreign country(ies) involved in covered transaction(s): _____ Type of APA: ☐ unilateral ☐ bilateral with _____ Tested party is ☐ US ☐ foreign ☐ both Approximate dollar volume of covered transactions (on an annual basis) involving tangible goods and services: ☐ N/A ☐ <\$50 million ☐ \$50–100 million ☐ \$100–250 million ☐ \$250–500 million ☐ >\$500 million APA tests on (check all that apply): ☐ annual basis ☐ multi-year basis ☐ term basis APA provides (check all that apply) a: ☐ range ☐ point ☐ floor only ☐ ceiling only ☐ other _____ APA provides for adjustment (check all that apply) to: ☐ nearest edge ☐ median ☐ other point
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APA Annual Report Information (to be completed by the Taxpayer)	APA date executed: _____, 201__ This APA Annual Report Summary is for APA Year(s) ending in 200__ and was filed on _____, 201__ Check here ☐ if Annual Report was filed after original due date but in accordance with extension. Has this APA been amended or changed? ☐ yes ☐ no Effective Date: _____ Has Taxpayer complied with all APA terms and conditions? ☐ yes ☐ no Were all the critical assumptions met? ☐ yes ☐ no Has a Primary Compensating Adjustment been made in any APA Year covered by this Annual Report? ☐ yes ☐ no If yes, which year(s): 200__ Have any necessary Secondary Compensating Adjustments been made? ☐ yes ☐ no Did Taxpayer elect APA Revenue Procedure treatment? ☐ yes ☐ no Any change to the entity classification of a party to the APA? ☐ yes ☐ no Taxpayer notice information contained in the APA remains unchanged? ☐ yes ☐ no Taxpayer's current US principal place of business: (City, State) _____												
APA Annual Report Checklist of Key Contents (to be completed by the Taxpayer)	<table style="width: 100%; border: none;"> <tr> <td style="width: 80%;">Financial analysis reflecting TPM calculations</td> <td style="width: 20%; text-align: right;">☐ yes ☐ no</td> </tr> <tr> <td>Financial statements showing compliance with TPM(s)</td> <td style="text-align: right;">☐ yes ☐ no</td> </tr> <tr> <td>Schedule M-1 or M-3 book-tax differences</td> <td style="text-align: right;">☐ yes ☐ no</td> </tr> <tr> <td>Current organizational chart of relevant portion of world-wide group</td> <td style="text-align: right;">☐ yes ☐ no</td> </tr> <tr> <td>Attach copy of APA</td> <td style="text-align: right;">☐ yes ☐ no</td> </tr> <tr> <td colspan="2">Other APA records and documents included:</td> </tr> </table>	Financial analysis reflecting TPM calculations	☐ yes ☐ no	Financial statements showing compliance with TPM(s)	☐ yes ☐ no	Schedule M-1 or M-3 book-tax differences	☐ yes ☐ no	Current organizational chart of relevant portion of world-wide group	☐ yes ☐ no	Attach copy of APA	☐ yes ☐ no	Other APA records and documents included:	
Financial analysis reflecting TPM calculations	☐ yes ☐ no												
Financial statements showing compliance with TPM(s)	☐ yes ☐ no												
Schedule M-1 or M-3 book-tax differences	☐ yes ☐ no												
Current organizational chart of relevant portion of world-wide group	☐ yes ☐ no												
Attach copy of APA	☐ yes ☐ no												
Other APA records and documents included:													
Contact Information	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th style="width: 50%; text-align: center;">Authorized Representative</th> <th style="width: 20%; text-align: center;">Phone Number</th> <th style="width: 30%; text-align: center;">Affiliation and Address</th> </tr> <tr> <td style="height: 40px;"></td> <td></td> <td></td> </tr> </table>	Authorized Representative	Phone Number	Affiliation and Address									
Authorized Representative	Phone Number	Affiliation and Address											

Definition of Terms

Revenue rulings and revenue procedures (hereinafter referred to as “rulings”) that have an effect on previous rulings use the following defined terms to describe the effect:

Amplified describes a situation where no change is being made in a prior published position, but the prior position is being extended to apply to a variation of the fact situation set forth therein. Thus, if an earlier ruling held that a principle applied to A, and the new ruling holds that the same principle also applies to B, the earlier ruling is amplified. (Compare with *modified*, below).

Clarified is used in those instances where the language in a prior ruling is being made clear because the language has caused, or may cause, some confusion. It is not used where a position in a prior ruling is being changed.

Distinguished describes a situation where a ruling mentions a previously published ruling and points out an essential difference between them.

Modified is used where the substance of a previously published position is being changed. Thus, if a prior ruling held that a principle applied to A but not to B, and the new ruling holds that it applies to both A

and B, the prior ruling is modified because it corrects a published position. (Compare with *amplified* and *clarified*, above).

Obsoleted describes a previously published ruling that is not considered determinative with respect to future transactions. This term is most commonly used in a ruling that lists previously published rulings that are obsoleted because of changes in laws or regulations. A ruling may also be obsoleted because the substance has been included in regulations subsequently adopted.

Revoked describes situations where the position in the previously published ruling is not correct and the correct position is being stated in a new ruling.

Superseded describes a situation where the new ruling does nothing more than restate the substance and situation of a previously published ruling (or rulings). Thus, the term is used to republish under the 1986 Code and regulations the same position published under the 1939 Code and regulations. The term is also used when it is desired to republish in a single ruling a series of situations, names, etc., that were previously published over a period of time in separate rulings. If the new ruling does more than restate the sub-

stance of a prior ruling, a combination of terms is used. For example, *modified* and *superseded* describes a situation where the substance of a previously published ruling is being changed in part and is continued without change in part and it is desired to restate the valid portion of the previously published ruling in a new ruling that is self contained. In this case, the previously published ruling is first modified and then, as modified, is superseded.

Supplemented is used in situations in which a list, such as a list of the names of countries, is published in a ruling and that list is expanded by adding further names in subsequent rulings. After the original ruling has been supplemented several times, a new ruling may be published that includes the list in the original ruling and the additions, and supersedes all prior rulings in the series.

Suspended is used in rare situations to show that the previous published rulings will not be applied pending some future action such as the issuance of new or amended regulations, the outcome of cases in litigation, or the outcome of a Service study.

Abbreviations

The following abbreviations in current use and formerly used will appear in material published in the Bulletin.

A—Individual.
Acq.—Acquiescence.
B—Individual.
BE—Beneficiary.
BK—Bank.
B.T.A.—Board of Tax Appeals.
C—Individual.
C.B.—Cumulative Bulletin.
CFR—Code of Federal Regulations.
CI—City.
COOP—Cooperative.
Ct.D.—Court Decision.
CY—County.
D—Decedent.
DC—Dummy Corporation.
DE—Donee.
Del. Order—Delegation Order.
DISC—Domestic International Sales Corporation.
DR—Donor.
E—Estate.
EE—Employee.
E.O.—Executive Order.
ER—Employer.

ERISA—Employee Retirement Income Security Act.
EX—Executor.
F—Fiduciary.
FC—Foreign Country.
FICA—Federal Insurance Contributions Act.
FISC—Foreign International Sales Company.
FPH—Foreign Personal Holding Company.
F.R.—Federal Register.
FUTA—Federal Unemployment Tax Act.
FX—Foreign corporation.
G.C.M.—Chief Counsel’s Memorandum.
GE—Grantee.
GP—General Partner.
GR—Grantor.
IC—Insurance Company.
I.R.B.—Internal Revenue Bulletin.
LE—Lessee.
LP—Limited Partner.
LR—Lessor.
M—Minor.
Nonacq.—Nonacquiescence.
O—Organization.
P—Parent Corporation.
PHC—Personal Holding Company.
PO—Possession of the U.S.
PR—Partner.
PRS—Partnership.

PTE—Prohibited Transaction Exemption.
Pub. L.—Public Law.
REIT—Real Estate Investment Trust.
Rev. Proc.—Revenue Procedure.
Rev. Rul.—Revenue Ruling.
S—Subsidiary.
S.P.R.—Statement of Procedural Rules.
Stat.—Statutes at Large.
T—Target Corporation.
T.C.—Tax Court.
T.D.—Treasury Decision.
TFE—Transferee.
TFR—Transferor.
T.I.R.—Technical Information Release.
TP—Taxpayer.
TR—Trust.
TT—Trustee.
U.S.C.—United States Code.
X—Corporation.
Y—Corporation.
Z—Corporation.

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¹A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2016–27 through 2016–52 is in Internal Revenue Bulletin 2016–52, dated December 26, 2016.

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INTERNAL REVENUE BULLETIN

The Introduction at the beginning of this issue describes the purpose and content of this publication. The weekly Internal Revenue Bulletins are available at www.irs.gov/irb/.

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