The following tax information is translated from the Korean for foreign-invested companies and is not legally binding.

Q. What is the APA process?

A. The APA process consists of the following steps:
   1. Pre-filing meeting → Filing of APA request → Evaluation → Mutual Agreement Procedure → Finalization of APA → Submission of annual report
   × APA: Advance Pricing Arrangement or Advance Pricing Agreement

Q. What is the pre-filing meeting?

A. A pre-filing meeting is informally held between a taxpayer and the National Tax Service (NTS) prior to a formal APA request, giving taxpayers a general idea of the APA program, including eligibility to request an APA. The taxpayer may request a pre-filing meeting on an anonymous basis. During the meeting, the applicant and tax officials discuss the APA process, key issues, and the information and documents required to file an APA request. The meeting also provides taxpayers with a better understanding of the general process and APA system operation.

   The NTS encourages pre-filing meetings to facilitate the APA request evaluation process.

   The following illustrates the key points that are usually discussed and reviewed during pre-filing meetings.
   - Background of the APA request
   - Tax returns (e.g., operating margin) that are filed prior to the tax years covered by the APA
   - Taxpayer’s eligibility to apply for an APA
   - Whether the covered transaction is suitable for an APA
   - Suitability of the proposed transfer pricing method (TPM)

Q. What documents should be submitted when requesting an APA?

A. A taxpayer requesting an APA should submit an application form (Form No. 3, prescribed in Article 3 (1) of the Enforcement Rules of the Adjustment of International Taxes Act) stating the applicable APA period and international transactions, the involved parties and the TPM to the International Cooperation Division of the NTS by the end of the first taxable year of the covered period.

   The taxpayer shall submit the following documents along with an APA application form:
   - A document stating the involved parties’ business profile, organization and investment relationship
   - The involved parties’ financial statements for the past three years, a copy of tax returns, a copy of the international transaction contract and documents appended to the contract
   - Documents explaining in detail the following about the proposed TPM:

Q. When is an APA canceled or withdrawn?

A. In the following cases, the Commissioner of the NTS may cancel or withdraw an APA approval.
   a. Where the taxpayer fails to file an annual report, or falsifies important matters in the annual report
   b. Where the taxpayer fails to observe the provisions or conditions of the APA
   - Refers to such cases where the applicant fails to comply with the conditions of the APA, such as the specific method for adjusting the difference between the actual transaction price and the arm’s-length price calculated by the agreed-upon TPM
   c. Where the important portions of conditions or assumptions are not realized (which form a premise for the arm’s-length price computation method approved in advance)
   d. Where the content of the prior approval has become improper due to changes in the relevant Acts and subordinate statutes or tax treaties

   If a significant change occurs to the “critical assumptions” that are a condition for APA approval and the approved transfer price computation method can no longer be applied, a request for APA modification can be made.

Q. What is the relationship between APAs and tax audits?

A. In general, tax audits are not suspended by a taxpayer’s APA request. However, even if a taxpayer is to undergo a tax audit, an audit on the transfer price of international transactions for the period covered by the APA can be suspended if an APA for the transaction has been requested before the pre-notice of a tax audit.

   However, if the taxpayer requests an APA but fails to submit the necessary documents prescribed by Article 9 of the Enforcement Decree of the Adjustment of International Taxes Act, the request shall be deemed invalid, and therefore, the taxpayer will not be granted a suspension of audit.

For more information, please contact the International Tax Resource Management Office of the National Tax Service (82-44-204-2888~90).