

# Guide to Advance Pricing Arrangements (APA)



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The information in this guide is based on laws and regulations prevailing at the time of publication. Taxpayers and payers can rely on this guide as to the MIRA's interpretation of the relevant tax laws and regulations. If you do not understand anything in this guide or have queries related to your particular circumstances, call 1415 or send an email to [1415@mira.gov.mv](mailto:1415@mira.gov.mv).

## List of abbreviations

<b>ACR</b>	Annual Compliance Report
<b>APA</b>	Advance Pricing Agreement/Arrangement
<b>APAR</b>	Advance Pricing Arrangement Regulation (Regulation Number 2021/R-42)
<b>BAPA</b>	Bilateral Advance Pricing Agreement
<b>CA</b>	Competent Authority
<b>DTAA</b>	Double Tax Avoidance Agreement
<b>ITA</b>	Income Tax Act (Law Number 25/2019)
<b>ITR</b>	Income Tax Regulation (Regulation Number 2020/R-21)
<b>MAPA</b>	Multilateral Advance Pricing Agreement
<b>MAP</b>	Mutual Agreement Procedure
<b>MIRA</b>	Maldives Inland Revenue Authority
<b>OECD</b>	Organisation for Economic Co-operation and Development
<b>PE</b>	Permanent Establishment
<b>TAA</b>	Tax Administration Act (Law Number 3/2010)
<b>TIEA</b>	Tax Information Exchange Agreement
<b>TPM</b>	Transfer Pricing Methodology
<b>UAPA</b>	Unilateral Advance Pricing Agreement

## Definitions

### 1. Arrangement

“Arrangement” means any agreement, contract, plan, or understanding, whether legally binding or not, including all steps and transactions by which it is carried into effect.

### 2. Associate

“Associate” means each of two persons where one person:

- controls, or is controlled by, the other, or both persons are controlled by the same person or persons; or
- is a relative of the other person; or
- is a partnership and the other person is a partner in that partnership; or
- is a partner in a partnership and the other person is a partner in the same partnership; or
- is a trust and the other person is a beneficiary of that trust; or
- is a trust and the other person is a settlor of the trust.

### 3. Competent Authority

The designated representative in each of the jurisdictions who will be responsible for administering treaties.

### 4. Controlled transaction

Transactions between two associates.

### 5. Covered transactions

International transactions covered in an APA.

### 6. Transfer pricing methodology

Transfer pricing methods employed to determine the transfer prices.

# I. Introduction

## I.1 Context for entering Advance Pricing Arrangements (APAs)

Transfer pricing plays a major role in world trade as a significant part of the world trade is conducted between members of the group or associates. In that regard, Maldivian entities undertake significant amount of transactions among members of the group or associates. Under the Income Tax Act (Law Number 25/2019) these transactions must be conducted at arm's length and prepare sufficient documentation to support the transfer pricing positions.

Large volumes of related party transactions carry a significant risk of transfer pricing audits and cross-border tax disputes. The APA program is a co-operative program between taxpayer and Maldives Inland Revenue Authority (MIRA) to determine solutions in advance to probable transfer pricing issues. APAs significantly mitigates such risks associated with the transfer pricing legal framework.

APAs enable MIRA to assure the tax base by working with multinational entities (MNEs) and ensure tax paid in the Maldives is reflective of the true economic contribution made by the Maldivian entity. With this context MIRAs officers would endeavor to provide a reasonable outcome for taxpayers and MIRA alike.

## I.2 Legal basis for and effect of an Advance Pricing Arrangement

Under the Section 53-I of the Tax Administration Act (TAA) (Law Number 3/2010), MIRA has the authority to enter APAs. MIRA could agree on a unilateral APA based on this domestic law provision.

Bilateral Advance Pricing Arrangements (BAPA) or Multilateral Advance Pricing Arrangements (MAPA) require two layers of legislative instruments; domestic law (i.e. Section 53-I of the TAA) and international agreement. In addition to the aforementioned domestic law provision, BAPA/MAPA's could only be agreed under a Double Tax Avoidance Agreement (DTAA) or Tax Information Exchange Agreement (TIEA's) or Mutual Administrative Assistance Agreements containing the provision for Mutual Agreement Procedure (MAP).

View list of tax treaties and international agreements [here](#).

APAs are regarded as binding on MIRA and the taxpayer. APAs will prevail over any other provision in any tax law which stipulates a special rule with regard to transactions with associates.<sup>1</sup> Transfer prices agreed in the APA would be the arm's length price prescribed for such transactions under the Income Tax Act.

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<sup>1</sup> Tax Administration Act (Law No. 3/2010) s 53-1.

## 2. Advance pricing agreements

### 2.1 What is an APA?

An APA is an arrangement that determines, in advance of a controlled transaction, transfer prices or an appropriate set of criteria (e.g. transfer pricing method, comparables, appropriate adjustments and critical assumptions) for the determination of the transfer prices for those transactions over a fixed period of time.<sup>2</sup> APAs are initiated by taxpayers and subsequently negotiated and agreed between taxpayer and tax administrations. Each APA is unique and will apply to a particular taxpayer or parties to the APA for a given period of time in relation to the stipulated transaction only.

### 2.2 What are the types of APAs?

MIRA has the authority to conclude three types of APAs.

#### 1. Unilateral APAs

Unilateral APAs are the agreements between MIRA and the taxpayer resident in the Maldives or a non-resident having a PE in the Maldives.

#### 2. Bilateral APAs

Bilateral APAs are the agreements between MIRA and the taxpayer resident in the Maldives, the associate of the taxpayer and the tax authority of the jurisdiction in which the associate is resident.

#### 3. Multilateral APAs

Multilateral APAs are the agreements between MIRA, the taxpayer in the Maldives and more than one associate of the taxpayer and the respective tax authorities of the jurisdictions in which those associates are resident.

A unilateral APA is effective only for Maldivian income tax purposes, as it does not involve any foreign jurisdiction. Transfer prices or criteria set to determine the transfer prices under a unilateral APA may not be accepted by foreign jurisdictions.

Whereas, under a BAPA or MAPA, in addition to being effective in the Maldives, ensures certainty for the associate of the taxpayer in another jurisdiction as the relevant tax authority agrees to the transfer prices. The tax authority would be able to bring necessary adjustments to avoid possible double taxation.

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<sup>2</sup> OECD (2017), Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations, OECD Publishing, Paris, 214.

## 2.3 Why enter into an APA?

An APA program provides certainty and mitigates various risks associated with transfer pricing.

- a. Certainty provided by the APA enables taxpayer to predict future tax liabilities and be in a better position to manage tax obligations and allocate resources.
- b. APA's provide a conducive environment for the taxpayer and MIRA to work together for legally correct and workable solutions, preventing litigation and disputes.
- c. Reduces the risk of time consuming and costly transfer pricing examinations and audits.
- d. Bilateral and Multilateral APAs significantly reduces the possibility of economic and juridical double taxation by ensuring correct allocation of income and tax.
- e. Reduces the burden of recordkeeping, as the taxpayer would be aware of the agreed transfer prices or criteria and documents necessary to support position.

## 2.4 Who can apply for an APA?

Taxpayers can apply for an APA under the program if the taxpayer is;

1. A resident and has entered or intends to enter into an international transaction with an associate; or
2. A non-resident, carrying on business through its permanent establishment in the Maldives, who has entered or intends to enter into an international transaction with an associate.

These are cross-border transactions with associates for which the taxpayer is required to prepare and maintain transfer pricing documentation under the Section 68(b) of the Income Tax Act (ITA) (Law Number 25/2019).

## 2.5 What makes MIRA more likely to enter an APA?

The decision to enter an APA is based on considering all facts and circumstances of each case. MIRA is more likely to enter an APA with a taxpayer if certain indicators are presents in the case including;

- High degree of tax compliance for previous years by the taxpayer;
- The outcome from the proposed transfer pricing methodology (TPM) is consistent with the *OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations 2017* (as amended 19 May 2017 or later);
- The absence of an APA would increase the risk of double taxation;
- Proposed APA transaction has already been entered and unlikely to change significantly;



- Transfer pricing issues are complex and uncertain of the application of transfer pricing rules.

All these indicators would be considered separately and weighted based on the case in question.

## 2.6 What makes MIRA less likely to enter an APA?

MIRA is less likely to enter an APA with a taxpayer if certain indicators are presents in the case including;

- Transactions are simple and routine in nature where arm's length conditions are certain;
- The value of the cross-border transaction is immaterial or pose a very low risk;
- The value of the proposed transaction present only a small portion of the total cross border dealings;
- The proposed arrangement or transaction lacks commercial rationality or is driven by tax motives;
- The APA would not ensure alignment between location of economic activity and taxation.

All these indicators would be considered separately and weighted based on the case in question.

## 2.7 Interaction between Tax Audits and APA

MIRA's tax audits and APA programs are separate and distinct programs. An agreement for an APA does not preclude taxpayer from the tax audits conducted by MIRA. Transactions of the taxpayer not covered by the APA may be audited under the relevant procedures set in the MIRA's compliance program. If MIRA believes that taxpayer has omitted or provided incorrect information in relation to an APA, MIRA may also commence an audit of the transaction covered in the APA. Cancellation of APA or withdrawal from the APA process would not, solely based on that reason, initiate an audit of the taxpayer.

If the requested transaction has already been selected for an audit, the APA team and the audit team will discuss about the risks and the possibility of an APA roll-back resolving the underlying risks, before discontinuing audit activity for previous years.

The following comparison of key features of tax audits and APAs.

Features	Audit	APA
<b>Initiation</b>	By the tax authority	By the taxpayer
<b>Issues covered</b>	Transfer pricing can be the only audit issue or one of many	Covers a cross boarder transaction(s) with associates
<b>Period</b>	Relates to transactions already undertaken	Apply to prospective transactions as well and the period of time depends on the industry, products or transactions involved
<b>Settlement</b>	A settlement can occur at any stage of the audit process or during the course of an objection or litigation	End result is similar to a settlement. A mutual agreement under the relevant treaty/ tax law
<b>Obligations</b>	Cooperation with tax authority and providing necessary documents for the ongoing audit process	For every tax year during the term of APA, annual compliance report must be filed

### 3. The APA Process

APA process covers the stages from taxpayer expressing interest in obtaining an APA till the term of the APA is successfully completed. MIRA's APA process consists of five stages; pre-filing consultation, formal application, evaluation and analysis of the application, negotiation and agreement of the APA and the submission of Annual Compliance Report (ACR).

The process map of MIRA's APA program is attached in [Annex I](#).

#### 3.1 Mutual expectations for APA development

APA is a co-operative process between taxpayer and MIRA. The successful completion of an APA requires a working relationship between taxpayer and MIRA which is built on mutual trust. Expectations we may have of each other include;

- all parties to co-operate fully and be committed to the process.
- that APA requests will be evaluated by MIRA on case-by-case basis, based on merits and facts surrounding the particular case.
- all parties to be transparent and provide all relevant information and material facts.
- all parties to provide prompt replies to all the reasonable queries.

#### 3.2 The APA team

MIRA's APA team consists of officers from different technical areas of the authority. The multi-disciplinary team would consist of officers from;

- International Relations and Cooperation Division;
- Technical Division;
- International Tax Audit Division;
- Legal Service Section;
- Competent Authority (in cases of BAPA/MAPA applications).

The officers from International and Cooperation Division would lead the APA team and is the point of contact for taxpayers in relation to the APA program and applications.

## 4. Pre-filing consultation

Before the formal application, taxpayers are required to request for a pre-filing consultation. To request for a pre-filing consultation, taxpayer must submit the completed 'Request for Pre-filing Consultation' (MIRA 923) form along with all the necessary information and documents. The application and documents could be emailed, posted or submitted over the counter. Please refer to sections [Address to submit APA request](#) and [Competent Authority of the Maldives](#) for more information.

### MIRA 923 Request for Pre-filing Consultation

Please click this [link](#) to download the fillable version of MIRA 923 Request for Pre-filing Consultation (English) form.

The purpose of the pre-filing consultation is to ascertain the suitability of entering into an APA.

There are two separate steps in this APA pre-filing stage.

### 4.1 Preliminary screening

The outcome of the preliminary screening would decide whether to go ahead with the pre-filing consultation or to decline the APA request at this stage. The decision would be based on a review of the taxpayer's MIRA 923 form and a taxpayer profile created based on the research conducted by the APA team. The preliminary research will look into taxpayer's;

1. Compliance history;
2. Performance under prior arrangements with MIRA;
3. Transfer pricing documentation;
4. The value of cross boarder dealings;
5. The value of proposed transactions;
6. Collateral issues of the taxpayer.

A satisfactory outcome from the preliminary screening ensures taxpayers progress in to the next step in the process; pre-filing consultation meeting.

Where in the preliminary screening, if it has been decided to decline taxpayer's application, MIRA must provide a written reason for the decision.

### 4.2 Prefiling consultation meetings

A meeting or set of meetings may be required to discuss the APA process and gather sufficient information, for MIRA to determine the feasibility of progressing into the formal application for an APA. The meeting may range from an informal discussion to a formal presentation. The

consultation gives an opportunity for MIRA to explain the APA policy and MIRA's approach to successfully complete the APA. MIRA will provide guidance on the content of the formal application and a possible timeline for the analysis of the application and MIRA to take a decision on the APA application. MIRA would also develop a customized case plan for the completion of APA after the filing of formal application.

These meetings are essential for the APA team to understand specific matters related to the proposed transaction. Understanding the transaction or arrangement helps officer in charge to decide on the broad aspects of the APA. The following issues would be discussed in the pre-filing consultation meeting;

1. Determination of the scope of the agreement;
2. Identification of the controlled transaction;
3. Identifying the preferred transfer pricing methods or combinations;
4. Determination of the suitability of the controlled transaction for an APA;
5. Discussion of the broad terms of the agreement;
6. Countries involved and the global value chain of the taxpayer;
7. The potential type of APA (i.e. BAPA/MAPA);
8. Documentation and analysis which might be required to complete formal application;
9. Identify any collateral issues and agree on approaches to resolve the issues;
10. Agree on a draft case plan for the completion of the APA process.

### 4.3 Matters that MIRA would consider in determining whether to invite taxpayer for a formal application

In determining whether to invite the taxpayer to lodge formal application all facts and circumstances of the case would be carefully reviewed as well as relevant matters other than the proposed transaction. The following may be considered when taking such a decision;

- Likelihood of double taxation in the absence of an APA;
- Significant part of a limited life project has not yet been completed;
- MIRA anticipates that the parties will agree on all aspects of the APA in a timely manner;
- There is an explanation that demonstrates that the actual conditions are relevant and material to the taxpayer's business;
- The information provided allows for a full and proper consideration of the APA request by MIRA.

The matters which officer in charge must consider is not limited to the above. The decision to proceed requires professional judgement having regard to the analysis and the taxpayer's facts and circumstances. The decision is important for MIRA before committing significant resources to the process.

Members from the MIRA's APA team and the taxpayer or taxpayer's representatives including tax agents may participate in the meetings. A written consent from the taxpayer must be

submitted for each member of the taxpayer's representative participating in the consultation meeting(s) and throughout the APA process. The consent authorizes MIRA to share taxpayer related information and have necessary discussions related to the APA with the representative. In case of BAPA or a MAPA, the competent authority of the Maldives or the representative of the competent authority must participate in the pre-filing consultation meeting(s).

With the completion of the pre-filing consultation meetings, MIRA must inform the taxpayer of the outcome of the meeting(s). If it has been decided to decline taxpayer's application, MIRA must provide a written reason for the decision.

Where the decision is to further escalate the APA application, the taxpayer will be invited to submit a formal application for the APA.

## 5. Formal application for an APA

Taxpayers who have completed the pre-filing consultation with an invitation for a formal application can lodge the formal request for an APA. To lodge the formal application, taxpayers are required to submit the completed 'Request for Advance Pricing Agreement' (MIRA 924) form together with all other material and necessary information and documents. Please refer to sections [Address to submit APA request](#) and [Competent Authority of the Maldives](#) for more information.

The process for BAPA/MAPA will be initiated when the associate of the taxpayer has requested, the competent authority of the jurisdiction of its residence, for an APA in respect of the same transaction. Taxpayer must submit the proof of such application along with the formal application.

### 5.1 Content of the formal application

The formal application must contain detailed information and supporting documents (without those that have already been submitted to MIRA at pre-filing stage) necessary for MIRA to evaluate the application and make a decision on the APA request. The content of the application and the extent of the supporting information and documents will depend on the facts and circumstances of each case.

The exact content of the application will be tailored to the case and will be briefed during the pre-filing consultation. Generally, the following information would be collected through the formal application;

1. Description of the taxpayer's business activities, transactions and arrangements which the taxpayer proposes to be included in the APA, the proposed scope and duration of the APA, and an explanation as to how the proposed transaction or arrangement falls within the scope of Section 68(b) of the ITA;
2. A description of the proposed transfer pricing methodology for the determination of transfer price through the APA, in accordance with the arm's length principle specified in Section 67 of the ITA;
3. Details of information and analysis supporting the transfer pricing methodology including;
  - a. Comparability analysis of the proposed transaction;
  - b. Functional analysis;
  - c. the most appropriate transfer pricing methodology selected and the basis of such selection;
  - d. Critical assumptions;
4. Information regarding world-wide organizational structure, history, financial statement data, products, functions and assets (tangibles and intangibles) of any associated enterprises involved;
5. Identification of the associated enterprise that is the party to the proposed transaction or arrangement, and the jurisdiction where such enterprise is resident;

6. A detailed list of any legal agreements between any associates which may affect the proposed APA including license agreements, purchase agreements, distribution agreements, R&D service agreements.
7. Details of any other jurisdiction(s) which the taxpayer wishes to participate in the APA;
8. Analysis of the industry and market trends.
9. Any other facts or information which may have a bearing on the current or proposed transfer pricing methodology and underlying data for any party to the request.

The rest of the section provides additional information on the key items from the above list.

### 5.1.1 Comparability analysis of the proposed transaction

The taxpayer should include details of the availability and use of comparable pricing information. This would include a description of how the search for comparables were carried out (including search criteria employed), what data relating to uncontrolled transactions was obtained and how such data was accepted and rejected as being a comparable. The taxpayer should include a presentation of the comparable transactions along with the adjustments to account for material differences, if any, between the controlled and uncontrolled transactions. In cases where no comparables can be identified, the taxpayer should demonstrate, by reference to relevant market and financial data (including the internal data of the taxpayer), how the chosen methodology accurately reflects the arm's length principle.

### 5.1.2 Functional analysis

Functional analysis is an essential part of the application submission. The analysis is aimed at identifying economically significant activities and responsibilities undertaken, assets used or contributed and risks assumed by the taxpayer and the associate(s) party to the transaction.

### 5.1.3 Transfer pricing methodology

The APA application should provide the full description of the chosen methodology. The taxpayer, to the extent possible, must provide an analysis of the effect of applying chosen methodology or methodologies for the proposed duration of the agreement. Such analysis necessarily will have to be based on projected results and so the details of the assumptions on which those projections were made will be needed. It may also be helpful to illustrate the effect applying the APA methodology to the periods immediately before the APA period.

### 5.1.4 Critical assumptions

In entering into an APA relating to the arm's length pricing of controlled transactions that have not yet occurred, it is necessary to make certain assumptions about the operational and



economic conditions that will affect those transactions when they take place. The taxpayer should describe in the proposal the assumptions on which the ability of the methodology to accurately reflect arm's length pricing for future transactions is based. Additionally, the taxpayer should explain how the chosen methodology will satisfactorily cope with any changes in those assumptions. The assumptions are defined as "critical" if the actual conditions existing at the time the transactions occur, could diverge from those that were assumed to exist, to the extent that the ability of the methodology reliably to reflect arm's length pricing is undermined. Examples: material changes to function, assets and risks, ownership and business structures, market share, sales price, legal environment, foreign exchanges movements and changes to interest rates.

Any set of critical assumptions needs to be tailored to the individual circumstances of the taxpayer, the particular commercial environment, the methodology, and the type of transactions covered.

## 5.2 Request to submit additional/missing information

In addition to the information provided along with the formal application, MIRA may request for supplementary information necessary for the evaluation of the application.

MIRA will notify the taxpayer, within a 45-day period of the application of any incomplete applications or missing information. Taxpayers will be given a period of not less than 30 days to rectify incomplete applications and submit requested information. Where the application is not completed in the given period, MIRA may grant a 15-day period requesting for an explanation for the failure to complete the application. After giving a 15 days period, MIRA's officer in charge in case of unilateral APAs and the competent authority in case of BAPA/MAPA may decide not to proceed with the APA application further.

## 5.3 Amending the formal application

Taxpayers can request to amend the formal application for the APA before any decision is made in respect of such application. MIRA's officer in charge in case of unilateral APAs or the competent authority in case of BAPA/MAPA may allow the amendment to the formal application. Such an amendment may be accepted if the amendment does not alter the nature of the original application.

## 5.4 Withdrawal of the formal application

The taxpayer can withdraw the request for the APA at any time before signing the agreement. However, withdrawal from the process, especially at a late stage, is highly discouraged because of the inevitable waste of resources. The taxpayer must notify of the withdrawal in writing.

## 5.5 Notifying the competent authority of the relevant jurisdictions

Where taxpayer requests for an BAPA/MAPA, competent authority of the Maldives will notify of the application to the competent authority of the other jurisdiction in which the associates(s) of the taxpayer is resident. This notification will be made at an early stage to maximise the efficiency of the process and engage with the relevant competent authority.

Once the required documentation is completed, the competent authorities can initiate the evaluation and analysis of the application.

## 6. Evaluation and analysis of the application

With the lodgment of the formal APA application, APA team will start analyzing the proposal according to the case plan. The purpose of this process is to have the relevant information, data and analysis needed to formulate MIRA's view of the correct arm's length transfer pricing and the most desirable set of terms and conditions for the APA. The position established based on this process is critical to conduct negotiations and reach an agreement.

In the process of evaluating and analyzing the APA proposal, MIRA may request for any additional information relevant to the process, carry out field visits to the taxpayer's business premises, conduct interviews with the staff, arrange meetings, review financial or managerial operations. The purpose is to identify tax technical and cross border risks that must be resolved. Additionally, the proposed TPM would be tested to compare with MIRA's position. It is at this stage APA team could consider engaging necessary experts internally from MIRA or external consultants. This helps APA team form initial positions for negotiation with the taxpayer or the relevant competent authority.

The ability of APA team to promptly conclude the process depends on the willingness of the taxpayer to provide the necessary information and assistance. At the same time ensuring such information is available to the competent authority of relevant jurisdictions in case of BAPA/MAPA. Taxpayers role in this process is to actively support the APA team.

### 6.1 Position paper

Upon completion of the evaluation and analysis process, MIRA would have concluded a decision with regard to the APA. After the evaluation, MIRA's officer in charge or the competent authority will either take the decision to proceed with the negotiation or decline the APA. The positions taken by MIRA would be discussed with the taxpayer to set negotiation parameters. This decision would be presented in the form of a position paper.

The position paper usually includes the following information;

1. The conclusion of the MIRA's officer in charge or the competent authority including the preferred methodology and reasoning substantiating it.
2. Reason for rejection or modification of taxpayer's initial proposal.
3. Details of the most important information in taking the position.
4. Details of the critical assumptions.
5. A position on the possibility of roll-back and duration of the APA.
6. Proposal of APA administering mechanisms.
7. Description of the legal provisions and nature of the APA.
8. The negotiation parameters agreed by the APA team and the competent authority.

MIRA will communicate the position paper with the taxpayer and exchange our position paper with the relevant competent authorities in a BAPA/MAPA case.

## 6.2 Why a request for an APA may be declined?

An APA can be processed for most international transactions with associates. There are certain transactions for which MIRA may decline to establish an APA. An APA cannot be established on the following circumstances;

1. The proposed transaction is hypothetical or not fully contemplated;
2. The proposed transaction involves tax avoidance or tax evasion or fraud;
3. The substantive matter of the transaction proposed is a matter is pending before a court of law.

### 6.2.1 Interaction with general anti-avoidance rule and collateral issues

APA team will carefully evaluate the arrangement or the transaction for possible application of the general anti-avoidance rule<sup>3</sup> and any other collateral issues that is needed to be resolved. If the APA team is in the view that the arrangement or transaction involves application of the general anti-avoidance rule, the application for the APA would be declined. Taxpayer could separately resolve the avoidance issues and make a new request for an APA.

However, other collateral issue effecting the proposed APA could be resolved during the APA process or agree to resolve the issue under MIRA's compliance program.

Refer to the Section 66 of the ITA and Section 128-1 of the Income Tax Regulation (ITR) (Regulation Number 2020/R-21) for details on the general anti-avoidance rules.

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<sup>3</sup> Income Tax Act s 66.

## 7. Negotiation and agreement

Once MIRA finalizes a position on the aspects of the APA and negotiation parameters, the position paper is communicated with the taxpayer in case of unilateral APAs or with the relevant competent authority in case of BAPA/MAPA, the negotiation process could be commenced. The purpose of the negotiations is to resolve any differences in positions with the taxpayer or other competent authorities to formulate an agreeable APA methodology and terms.

### 7.1 Unilateral APAs

Unilateral APAs are agreements between the taxpayer and MIRA. Where the position paper is communicated with the taxpayer and there are differences in the respective positions, negotiations with the taxpayer must be commenced to reach an agreement. Once the terms and conditions of the APA are finalized, MIRA will conclude an APA with the taxpayer.

### 7.2 Bilateral/Multilateral APAs

The position papers would be exchanged between the competent authorities to commence the negotiation. Negotiation of BAPA/MAPA is a government to government process, where competent authorities communicate to resolve any differences in positions and endeavor to reach an agreement. The negotiation may be in the form of exchange of papers, informal calls and video-conferences or formal face-to-face meetings. However, MIRA would provide updates on the negotiations to the taxpayer and may consult the taxpayer during the negotiations.

Participating competent authorities would prepare a draft agreement with negotiated elements when they have agreed on the methodology and other terms and conditions. It may be that, despite the best efforts of the competent authorities, the proposed agreement does not completely eliminate double taxation or meet the expected result of the taxpayer. The taxpayer would be given an opportunity to consider whether such a draft BAPA/MAPA is acceptable before it is finalised; there can be no question of imposing such an agreement in advance without the taxpayer's consent. Once the taxpayer accepts the draft BAPA/MAPA, the agreement would be formalized and signed by the competent authorities.

With the finalization of the APA, MIRA and the taxpayer would finalise a separate agreement, to provide taxpayer with the certainty that the transfer pricing for the transactions will be as determined in the BAPA/MAPA and that the transactions will not be subject to a different interpretation by the tax administration. The final APA between competent authorities and between MIRA and taxpayers governs the behaviour of everyone involved in the APA. There are likely to be two separate agreements that together constitute the APA in a BAPA/MAPA and one single agreement in case of a unilateral APA.

## 7.3 Information included in an Advance Pricing Agreement

APA determines the transfer prices of a proposed arrangement or transactions for a fixed duration of time. The Advance Pricing Arrangement Regulation (APAR) (Regulation Number 2021/R-42) prescribes detailed information to be provided in the agreement to ensure agreed transfer prices are accurate and ensures compliance from taxpayers. The agreement contains the following information;

- The names, residency status and addresses of the enterprises covered by the APA;
- Transactions, arrangements and agreements covered by the APA;
- Periods (i.e. tax years) covered by the APA;
- Description of the agreed transfer pricing methodology and other related matters such as agreed comparables or a range of expected results;
- Critical assumptions upon which the transfer pricing is based, the breach of which would trigger renegotiation of the agreement;
- Definitions of relevant terms and phrases used in the APA;
- Procedures for making any compensating adjustments, if necessary;
- Other conditions determined by MIRA, if any, other than those specified above.

## 7.4 Duration of the Advance Pricing Agreement

APAs will be valid for a period specified in the agreement. An APA can be agreed for a maximum period of 5 years.

## 7.5 Who can sign the Advance Pricing Agreement?

Unilateral APAs will be signed between the taxpayer and the Commissioner General of Taxation. The taxpayer or any person who is authorized by the taxpayer can sign the agreement on behalf of the taxpayer. BAPA/MAPAs will be signed between the competent authority of the Maldives and the other competent authority(ies).

## 7.6 What will happen if competent authority(ies) fail to reach a BAPA/MAPA?

APA is an agreement based on complex set of information and predictions. Competent authorities may fail to reach an agreement even with best efforts by the competent authorities. The taxpayer will be informed of the conclusion of the competent authority negotiations. In cases where competent authorities failed to reach an agreement, taxpayer can opt to enter into a unilateral agreement with MIRA or can withdraw the application.

## 8. Annual Compliance Report (ACR)

### 8.1 Filing annual compliance report

Taxpayers are required to submit an ACR for every tax year during the term of the APA. The report consists of the following information;

1. Description of the actual operations of the taxpayer during the tax year to which the report relates;
2. Demonstration of compliance with the terms and conditions of the APA;
3. Confirmation that the critical assumptions or conditions subject to which the agreement was entered into have been met;
4. Appropriate information and computations necessary to describe and support the application of the TPM to the covered transactions and the results for that APA year;
5. Any other items as may be appropriate to the particular circumstances of the taxpayer and APA.

The ACR for the tax year must be submitted by 30 June of the immediately following the tax year. MIRA may revoke the APA for failing submit the ACR.

### 8.2 Review of the ACR

Once an ACR is lodged by the taxpayer, MIRA would thoroughly review the ACR focusing on whether the taxpayer has fully complied with the terms and conditions agreed by the taxpayer in the APA. The officer would examine the critical assumptions to understand whether there has been a breach and review the arm's length prices of the transactions. If there are any breach in critical assumption or prices lower or near lower bound of the price range, the reviewing officer may request for explanations and may escalate the matter to the APA team to consider modifying, suspending or cancelling the APA.

The APA team would assess the recommendation made by the reviewing officer of the ACR and take a decision either to leave the agreement as it is, modify, suspend or cancel the APA. MIRA must provide a written reason for the decision.

In case of a breach in the BAPA/MAPA the competent authorities would discuss how to treat the breach under tax treaty.

## 9. Benchmark timeframe to complete the APA process

The scope of the agreement, complexity of the case, extent of co-operation, quality of information, type of the APA request and other relevant factors will determine the time needed to complete the APA process. The time expected to be taken to complete an APA case depends facts and circumstances surrounding the particular case.

MIRA would be committed to complete the APA process within a period not exceeding 24 months. APA team would agree on an expected timeframe during the pre-filing consultation and agree on a case plan. MIRA would seek to complete the pre-filing consultation within 6 months and the rest of the APA process by 18 months. The start date to count the timeframe would be the date which all relevant documents and information are submitted by the taxpayer to commence the pre-filing consultation. The end date of the APA process would be the date of an official communication of the decision whether to decline an APA or sign an APA or taxpayer withdraws the application.

MIRA would try to complete the case within the benchmark timeframes, however, there may be factors that might delay the process. MIRA would communicate with the taxpayer of any unexpected delays in the process.



## 10. Record-keeping requirement

The taxpayer must maintain all records relied upon in concluding the APA and all other supporting documents and information material to the APA. All relevant records must be maintained for the purpose of verifying the taxpayer's compliance with the APA. Such records must be maintained for a minimum period of 5 years.

## 11. Revising an Advance Pricing Agreement

MIRA may revise an APA if it has been established that;

1. there is a material change in any of the critical assumptions or conditions subject to which the agreement has been entered into;
2. there is a change in a non-critical assumption;
3. there is a request from the competent authority of the other jurisdiction to revise the agreement in case of a bilateral or multilateral APA.

The taxpayer may request MIRA, in writing, to revise the APA. After consideration, where MIRA declines to revise the APA, the taxpayer will be informed of the decision and the grounds for the decision in writing.

Where MIRA decides to revise the APA, the taxpayer will be informed of such intentions and given an opportunity to present taxpayers view on the proposed revision. MIRA must revise the APA only in cases where the taxpayer agrees to the proposed revision. If the taxpayer is not in agreement with the revisions, MIRA may cancel the APA as described in [13. Cancelling an Advance Pricing Agreement](#).

The revised APA will specify the date from which the revised APA is effective and the date on which the original APA is no longer effective.

In cases of a BAPA/MAPA, first MIRA and the taxpayer must reach an agreement to revise APA and subsequently the proposal will be submitted for the consideration of the relevant competent authority. If the competent authorities agree with the proposed revision, a revised BAPA/MAPA would be issued. Otherwise the original APA would continue to be applied or MIRA may cancel the APA as described in [13. Cancelling an Advance Pricing Agreement](#).

## 12. Revoking an Advance Pricing Agreement

MIRA may revoke an APA if it has been established that;

1. There was a misrepresentation, mistake or omission, that was attributable to willful default, in the application made for the APA or in the annual compliance report;
2. The annual compliance report was not filed on time without a reasonable cause;
3. The participating taxpayer(s) failed to materially comply with a fundamental terms or conditions of the APA.

When an APA is revoked MIRA will inform, the taxpayer and relevant competent authorities, of the decision and grounds for revoking the APA. Such revocation will be retroactive to the first day of the first tax year covered under the APA. The APA will have no force or effect for any covered periods as if APA was not signed in the first place.

## 13. Cancelling an Advance Pricing Agreement

MIRA may cancel an APA if it has been established that;

1. There was a misrepresentation, mistake or omission, that was not attributable to willful default, in the application made for the APA or in the annual compliance report;
2. The annual compliance report was not filed on time without a reasonable cause;
3. The participating taxpayer(s) failed to materially comply with any one of the terms or conditions of the agreement;
4. There was a material breach of any of the critical assumptions on which the agreement was based;
5. There was a change in tax law, or in the tax treaty provisions or provisions of an international agreement, which are materially relevant to the APA, and, such that has not proved possible to revise the agreement to take account of the changed circumstances.

When an APA is cancelled MIRA will inform, the taxpayer and relevant competent authorities, of the decision and grounds for cancelling the APA. The date of cancellation would be the first day of the tax year on which the reason for the cancellation relates. The APA will have no force or effect after the date of cancellation (i.e. the year of cancellation and thereafter).

## 14. Retroactive application of APAs (Roll-back)

Roll-back of an APA means the application of the terms and conditions of the APA to the periods prior to the periods covered by the APA. The main purpose of the APA is to ensure certainty for transactions to be carried for future periods and the retroactive application for past transactions is secondary. However, it is an effective and appropriate mechanism to resolve (potential) transfer pricing disputes for past tax years. Generally, the decision on the availability of roll back depends on facts and circumstance of each case. APA team would assess the risks of the particular case having regard to our internal risk assessment procedures. A roll-back of an APA may be agreed by considering the following factors;

1. Time limits set by other participating jurisdictions;
2. Relevant facts and circumstances for earlier years and periods covered by the APA.
3. Whether or not there is an ongoing tax audit or investigation;
4. Whether or not there is an ongoing court case.

The agreed transfer pricing methodology in the APA will be applied for the transactions undertaken for prior years covered in the APA roll-back.

## 15. Compensating adjustments

During the negotiation process the APA team and the taxpayer would discuss the process to bring compensating adjustments (if necessary) to the tax position in the Maldives. A compensating adjustment to the prices must be brought when the actual results of the taxpayer fall's outside the arm's length range of the APA. This adjustment would bring recorded amounts or results of the covered transactions into agreement with the amounts or results of the covered transactions as determined by the application of the TPM set out in the APA. The adjustment is made after the tax year ends. The adjustment could either increase the amount of income, reduce the amount of allowable deduction or reduce the amount of loss. The process and the timeframe to bring compensating adjustment in relation to a particular APA would be agreed in the APA. However, below described are general timeframes as provided in the law.

Taxpayer could bring a compensating adjustment before the deadline for the submission of annual income tax return without incurring any late payment fines due to the changes in tax position.

If the annual tax return is filed, taxpayer must bring an adjustment to the tax position by amending the tax return. Taxpayer could amend the tax return with 12 months from the deadline to submit the annual income tax return. Any adjustment made after the deadline leading to increase in the tax liability would be subjected to late payment fines as specified in the TAA.

## 16. Costs related to an APA

A non-refundable application fee may be charged from the taxpayers. The application will be accepted only when the application fee is paid to MIRA.

Overseas travel expenses incurred by APA team or the competent authority in the process of completing the APA must be borne by the taxpayer.

## 17. Confidentiality and disclosure of information

All the information obtained or generated by MIRA or the competent authority during the course of establishing the APA or any information collected thereafter would be confidential. Confidentiality obtained information is of utmost importance to MIRA. Tax Administration Act in the Maldives contains strict provisions that require information exchanged to be kept confidential and limit the persons to whom the information can be disclosed and the purposes for which the information may be used.

MIRA may publish aggregated information of the APA statistics according to the disclosure provisions as provided in the Tax Administration Act. Any factual information provided during the process may be used in MIRA's risk assessment program.



## 18. Competent Authority of the Maldives

**Ms. Aminath Zumra**

Deputy Director General

Planning and Development

Email: [zumra.a@mira.gov.mv](mailto:zumra.a@mira.gov.mv)

Telephone: +960 3019657

## 19. Address to submit APA request

To submit an APA request, email it and any other correspondence relating to an APA to [internationaltaxation@mira.gov.mv](mailto:internationaltaxation@mira.gov.mv).

Alternatively, our postal address for submitting an APA requests is:

Maldives Inland Revenue Authority,

Ameenee Magu,

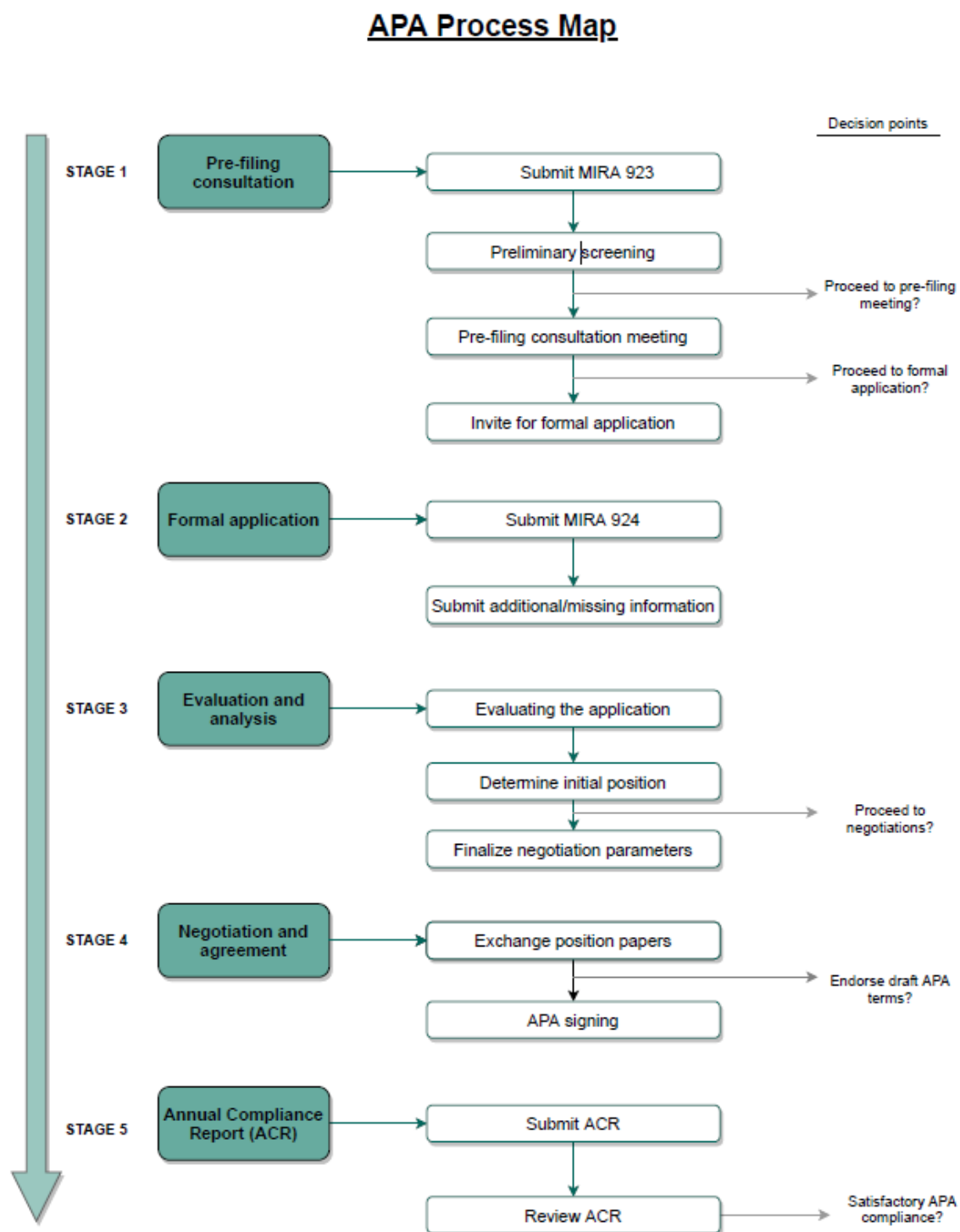
Male' 20379,

Republic of Maldives.

## 20. For support and assistance

Taxpayers can email MIRA at [internationaltaxation@mira.gov.mv](mailto:internationaltaxation@mira.gov.mv) for further clarifications.

## Annex I: APA Process MAP



Benchmark timeframe to complete APA process up to APA signing is less than 24 months

FOR QUERIES



1415



1415@mira.gov.mv

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Maldives Inland Revenue Authority



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