

Saudi Arabia

Advent of APA in KSA Transfer Pricing Regime

May 2024

1. Introduction

In March 2023, the Board of Directors of Zakat, Tax and Customs Authority, “ZATCA” approved the amendments to the Transfer Pricing Bylaws, introducing the provisions relating to Advance Pricing Agreements (“APA”) under Article 23, to Taxpayers and Zakat payers, vide [Authority No. \(8-2-23\) dated 08/28/1444 AH corresponding to 20/03/2023 AD](#), applicable from Financial Year beginning on or after 1st January 2024.

Accordingly, on May 19, 2024, ZATCA officially launched the Unilateral APA Process by inviting applications from Taxpayers and Zakat Payers. While the amended TP Bylaws are yet to be published by ZATCA, it is expected that the KSA APA guidelines would also fall in line with the OECD APA guidelines.

This alert highlights the key attributes of the KSA APA program and provides a general overview of the APA process with an intent to familiarize businesses and keep them abreast of the upcoming changes.

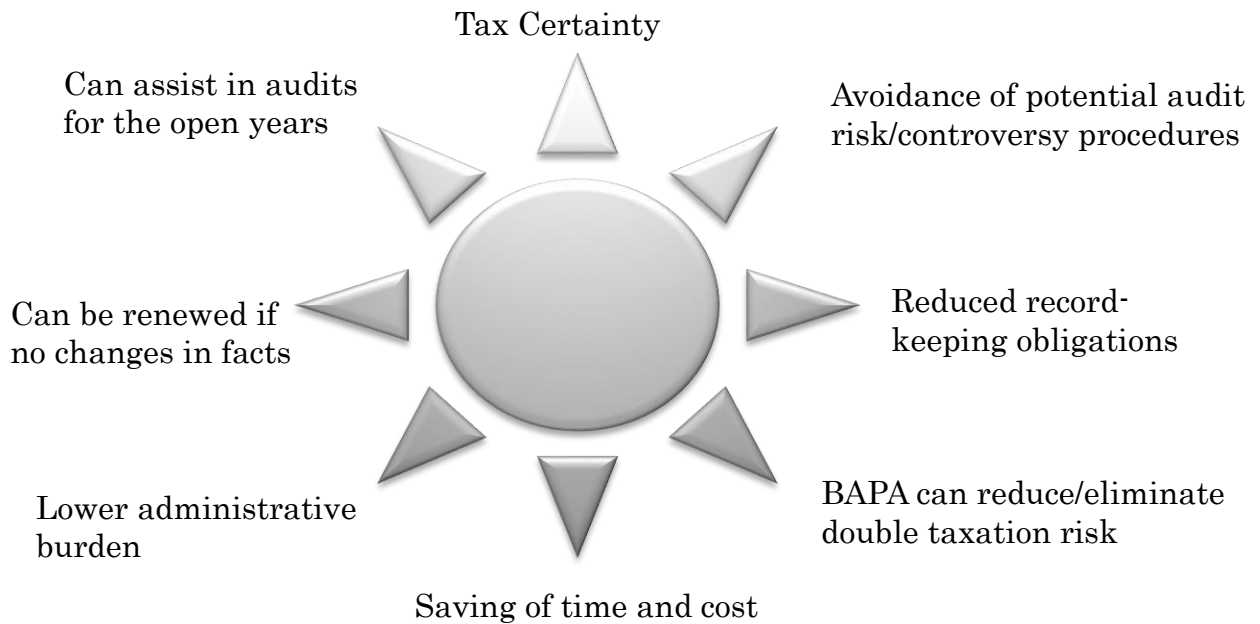
2. KSA APA Program- Key highlights

Applicability	<ul style="list-style-type: none"> Applicable from Financial year beginning on or after 1 January 2024 Applicable to Tax payers and Zakat payers
Eligibility	<ul style="list-style-type: none"> Value of related party transaction to be not less than SAR 100 million (~26.66 million USD) Application for APA must be filed 12 months prior to the first year in which APA is applied for
Type of APA	<ul style="list-style-type: none"> From May 19, 2024, ZATCA has started receiving applications from Tax payers and Zakat payers for Unilateral APAs .



3. What is APA?

- An APA is an agreement between a tax payer and tax authority determining the transfer pricing methodology for pricing the tax payer’s related party transactions for future years.
- It is a proactive way to eliminate future litigation for covered transactions once the agreement is signed between the tax authority and the tax payer.
- Entering into an APA offers the following advantages to the taxpayers



4. Coverage

- Generally an APA would cover a specified period ranging from 3 to 5 years and would also provide for a rollback provision for prior years (for 3-5 years).
- However more clarity is expected when additional guidance is published by ZATCA on the years covered including roll back.



5. Types of APA

Unilateral APA – One Country

- **Agreement between :**
 - Taxpayer &
 - Tax Authority of host country i.e country in which the tax payer is located
- **Diasdvantage-** May result in double taxation issues

Bilateral APA – Two Countries

- **Agreement between:**
 - Taxpayer &
 - Tax Authority of host country &
 - Foreign Tax Authority i.e. Tax Authority of the country in which the related party operates
- **Diasdvantage-** Longer timelines for finalisation of APA

Multilateral APA – More than Two Countries

- **Agreement between::**
 - Taxpayer &
 - Tax Authority of host country &
 - Multiple Foreign Tax Authorities (i.e.tax authorities of the related parties)

- In KSA, ZATCA has invited applications for unilateral APA's at the moment, however once the guidance is published it is likely to provide more clarity on ZATCA's stand relating to Bilateral and Multilateral APAs. Further details regarding the filing fees, format of application etc. are yet to be intimated by ZATCA.



6. APA Process

- The below steps describe the general APA process, more information specific to KSA APA regulations is awaited
 - **Step 1:-Pre Filing Consultation:-** Before a formal APA application can be made, a tax payer is required to request for a pre filing consultation with the Tax Authorities to enable the taxpayer and tax authorities to assess the possibility of entering into an APA. The consultation would involve discussions around the nature and scope of agreement, transfer pricing issues, related party transactions proposed to be covered, Transfer Pricing method to be adopted, pricing adjustments etc. The discussion in pre filing consultation is generally not binding on either party and allows tax payers to maintain anonymity.

KSA mandates pre-filing consultation before a formal APA application can be filed. Accordingly Taxpayers must initiate this process in advance to be able to meet the timing requirement for filing the APA application under the eligibility criteria.

- **Step 2:-APA Application-** A formal APA application under a Unilateral APA (as in the case of KSA), shall be filed by the tax payers with the tax authority of the country in which it operates. The application shall require details of the multinational structure, organisation arrangement, operational set-up including major transaction flows, detailed functional analysis of the taxpayer and the relevant entities, critical assumptions and economic analysis for the covered transaction. The application filed may be withdrawn anytime before finalisation of terms of the agreement.

The intimation regarding the format and contents of the application is yet to be published by ZATCA. However as per ZATCA's latest notification, an interested taxpayer seeking to apply for an APA can approach APA-gma@zatca.gov.sa for further information and guidance.

- **Step3:- Preliminary processing of application-** The application filed shall be validated by the APA authorities for any defects or want of information and also if the application is in accordance with the pre-filing consultation. Any deficiency shall then be intimated to the applicant. The applicant would be required to address the same within the specified time. Once rectified the application will be accepted for further processing.
- **Step 4:- Procedure-** At this stage the APA authorities will conduct a thorough analysis of the application filed, hold meetings with applicant, call for additional documents or information, visit the applicant's business premises and make such enquiries as it may deem fit. The APA authorities would also undertake a detailed Functional Analysis and finally conclude on their views regarding the Transfer Pricing approach of the applicant through a position paper.
- **Step 5:- Negotiation-** In this stage, the final terms of the APA agreement are negotiated and concluded between the applicant and the APA authorities.
- **Step 6:- Signing of Agreement-** Once negotiation is concluded and the terms are agreed upon, the Taxpayer and the Tax Authority will sign the APA agreement, which shall be binding on either parties for the period mentioned therein. However the taxpayer is required to comply with all the terms and conditions as specified and agreed upon during the tenure of the agreement.
- **Step 7:- Post APA procedures- Annual Compliance Report and compliance audit:-** The Taxpayer would be required to file an annual compliance report throughout the APA period and the APA authorities may also undertake compliance audit to ensure that the critical assumptions, terms and conditions of the Agreement are complied with.



7. APA Preparedness

- Considering the nature, complexity and the value of related party transactions, businesses may need to evaluate the option of entering into an APA, keeping in mind the cost, effort and time involved in the said process.
- Once the decision to enter into an APA is made, it is critical for businesses to:-
 - Maintain robust TP Policy aligned with commercial substance
 - Maintain intercompany agreements reflecting the TP policy
 - Documentation to support that actual business conduct adheres to the TP Policy
 - Deciding on information, documents and agreements to be shared with the APA authorities.



8. Way Forward

- The introduction of APA programme in KSA will definitely serve as a precursor to promoting and fostering a healthy Transfer Pricing environment, providing businesses with much needed tax certainty and facilitating ease of doing business. However the businesses are required to assess and evaluate the need for entering into an APA on case to case basis considering the nature, criticality and value of the related party transactions vis-à-vis the time & cost that would be involved in that process.



9. How we can help!

- VSTN offers end to end support in APA process including:-
 - In-depth analysis of business and aligning the transfer pricing policy with the business model
 - Providing strategic guidance in preparation and submission of APA application
 - Negotiation with Tax Authorities
 - Post conclusion support
 - Filing of annual compliance report and
 - Audit

About us



VSTN Consultancy Private Ltd is a boutique Transfer pricing firm with extensive expertise in the field of international taxation and transfer pricing.

Our offering spans the end-to-end Transfer Pricing value chain, including design of intercompany policy and drafting of Interco agreement, ensuring effective implementation of the Transfer Pricing policy, year-end documentation and certification, BEPS related compliances (including advisory, Masterfile, Country by Country report), Global Documentation, safe harbour filing, audit defense before all forums and dispute prevention mechanisms such as Advance Pricing agreement.

We are structured as an inverse pyramid where leadership get involved in all client matters, enabling clients to receive the highest quality of service.

Being a specialized firm, we offer advice that is independent of an audit practice, and deliver it with an uncompromising integrity.

Our expert team bring in cumulative experience of over Six decades in the transfer pricing space with Big4s spanning clients, industries and have cutting edge knowledge and capabilities in handling complex TP engagements.



VSTN Consultancy Pvt Ltd., © 2024. All Rights Reserved.

