

**FAQs ON ADVANCE PRICING ARRANGEMENT (APA) TREATMENT
DUE TO COVID-19 PANDEMIC**

No.	Item	Details
New APA Application		
1.	Can taxpayer file a new APA application request during period of Covid-19 pandemic?	IRBM is currently not accepting any new APA application from businesses affected by Covid-19 pandemic until further notice since the outlook of the Covid-19 pandemic is still highly uncertain. For businesses which are not impacted by Covid-19, taxpayer can still proceed with APA application.
Treatment of On-going APA		
2.	How is an on-going APA application reviewed by IRBM?	<p>The review process of an on-going APA application request is based on the information previously submitted to the IRBM. The proposed arm's length range will be based on the benchmarking analysis of normal economic and market conditions i.e. pre-Covid-19 period.</p> <p>IRBM does not allow any amendment or substantial updates on material changes to the on-going application as the full impact of Covid-19 is highly uncertain at this point of time.</p> <p>Depending on the facts and circumstances of the case, the term test may be applied in order to take into account the impact of Covid-19 on the proposed covered transaction. The Annual Compliance Report (ACR) will be required to be submitted annually notwithstanding the application of term test. Any compensating adjustment shall be made at the end of the APA covered period.</p>
3.	What options are available to taxpayer for on-going APA?	Taxpayer can continue with the on-going APA based on information previously submitted to IRBM or taxpayer can withdraw from the APA application if the probability of the impact of Covid-19 on taxpayer's business is significant.
4.	Can taxpayer submit a revised range of margins/projections for on-going APA negotiation if its business is impacted by the Covid-19?	As mentioned in Question 2, all on-going APA applications are based on the information previously submitted to the IRBM. Therefore, IRBM will process the APA applications based on the proposed range of margins submitted in the APA applications prior to the Covid-19 period. Newly proposed margins are deemed unsuitable as they are based on highly uncertain projections/forecasts.
5.	When can a taxpayer that had withdrawn the APA application	A taxpayer that had withdrawn an APA application may file a new APA application subject to conditions stated in question 1.

No.	Item	Details
	due to circumstances of Covid-19 apply for a new APA?	
Treatment of Concluded APA		
6.	Is taxpayer allowed any relief from complying with critical assumptions if any of the critical assumptions are breached due to the impact of Covid-19?	Taxpayer is required to comply with all the critical assumptions stated in the APA agreement with no exception. However, taxpayer can notify the IRBM of the need for a revision to the APA in the event it cannot fulfil the critical assumptions due to Covid-19 as explained in Question 7.
7.	What should taxpayer do if it cannot fulfil the critical assumptions in the APA agreement in force due to Covid-19 impact?	<p>Taxpayer can either revise or apply for the cancellation of the APA.</p> <p>For the revision of an APA, taxpayer must notify the IRBM within 30 days of becoming aware of the need for a revision to the APA due to the economic and business impacts from Covid-19 that may have triggered a failure to meet the critical assumptions stipulated in the APA. The application for an APA revision or cancellation must be supported with relevant documents.</p> <p>The procedures for a revision and cancellation of an APA is outlined in paragraph 29 and paragraph 30 of the APA Guidelines 2012 respectively.</p> <p>In the case of Bilateral APA/Multilateral APA, any application for a revision or cancellation will be subject to further negotiation with treaty partner(s) taking into account all relevant tax jurisdictions' APA regulations and procedures.</p>
8.	What happens if there is a failure to conclude a revised APA requested by taxpayer due to failure to comply with critical assumptions as stated in Question 6?	If Competent Authorities (in cases of Bilateral APA/Multilateral APA) or IRBM and taxpayer (in the case of Unilateral APA) fail to conclude a revised APA, then CA/ DGIR may cancel the APA.
Renewal of APA		
9.	Can taxpayer apply for renewal of an expiring APA and how is the renewal being treated if the business is impacted by Covid-19?	As stated in paragraph 31.2 of the APA Guidelines 2012, an APA can be renewed under the terms and conditions similar to the expiring APA. Taxpayer does not qualify for a renewal if the critical assumptions in the expiring APA are no longer valid or relevant due to material changes on taxpayer's business as a result of Covid-19 pandemic. Hence, under such circumstances, the taxpayer may file a new APA application or choose not to submit a new APA application.

This guidance will be updated from time to time based on current development and circumstances relating to Covid-19 impacts and issues.