



# TRANSFER PRICING



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**REPORT**

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## Advance Pricing Agreements

### **Practitioners Discuss APAs in United States, Europe During an Economic Recession**

**P**ractitioners who discussed the difficulties of transfer pricing during an economic recession May 20 generally praised the United States as well as European countries with experienced advance pricing agreement programs for expressing flexible attitudes towards handling APAs during a downturn.

Tony Curtis of PricewaterhouseCoopers LLP in New York said during the Webcast by his firm that government flexibility on renegotiating existing APAs depends on the facts and circumstances of the taxpayer's case. He pointed out, however, that one factor in the government's decision may be whether the APA is unilateral or bilateral. While it may be quite difficult to renegotiate a unilateral APA based on a large decline in sales, in the bilateral APA context "competent authorities are aware they have to be flexible."

Greg Ossi of PwC's Washington, D.C., office—formerly chief of Branch 1 in the U.S. APA Program—said the U.S. program was "out front" in considering how to deal with the effects of an economic downturn on existing APAs, and pointed to an internal group created by APA Program Director Craig Sharon to study the impact of the downturn on APAs. Sharon, noting that the program generally prefers not to reopen cases, said the group will discuss "what kinds of adjustments would be appropriate if it did" (17 *Transfer Pricing Report* 762, 2/19/09).

Ossi said he thought the APA office was "clearly working on figuring out" the issue of how to deal with existing APAs in the midst of a recession but does not have a "fixed menu of things they are willing to do in every case."

The practitioner also advised taxpayers that if they are considering negotiating a new APA with atypical techniques for addressing poor economic conditions, "a

pre-filing meeting to get some buy-in from the APA office is advisable.”

**European APAs.** Steve Hasson of PwC in London generally praised European tax authorities for being “amenable to informal discussions” even prior to a pre-filing meeting to hash out with a taxpayer the effects of the recession on its transfer pricing. However, he said, that may not be the case for countries that have only recently created APA programs. Those governments do not have the experience to deal with transfer pricing issues that arise in a downturn and may be less willing to accommodate taxpayers, Hasson warned.

For example, Hasson noted that senior officials in countries with experienced APA programs have ex-

pressed a willingness to “discuss substantial reductions in distributor margins.” However, Ossi pointed out that European tax authorities, such as Germany, that have agreed to be flexible on distributor margins have also required that the IRS be similarly flexible on the U.S. end.

BY TAMU N. WRIGHT

□ *For a discussion of APAs in the United States, see 890 T.M., Transfer Pricing: Alternative Practical Strategies.*

□ *For a discussion of APAs in Europe, see 895 T.M., Transfer Pricing: European Rules and Practice and 896 T.M., Transfer Pricing: European Rules and Practice, Part 2.*