

# Advanced Pricing Agreements

**Considerations and Tax  
Reform for 2022**



# Advance Pricing Agreements

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The Advance Pricing Agreement scheme (or APA) has suffered considerable changes in the last year, due to negotiations between the tax authorities of México and the U.S., which has prompted each authority to make changes in their corresponding tax systems.

On September 8, 2021, the SAT published its project for a Tax Reform 2022, which includes important news for any taxpayer with an APA submitted to the tax administration, as well as important consideration for the future of maquiladora companies.

# Background

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At the end 2020, the SAT started to deliver resolutions to APAs from fiscal years 2014-2018. With these resolutions, taxpayers noticed the following:

- The SAT, as opposed to previous periods, established no communication with the taxpayer in order to review the analysis submitted and discuss methodology and possible results. Therefore, no negotiation discussion were able to take place.
- The Fast Track methodology (otherwise known as Qualified Maquiladora Agreement version 1, or QMA 1) was arbitrarily applied to every APA request, despite the SAT making it clear that this was an option only for those that desired it or deemed it beneficial for their companies.
- The SAT offered no benefits for adjustments of previous years, meaning that in addition to having to adjust the Income Tax, taxpayers would also have to pay considerable amounts in surcharges and updates.
- While the APA scheme was supported by Mexican tax legislation, the QMA methodology is not established in any Mexican rule, law, or other.

# Background

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Additionally, the tax authorities published a notice in November 2020 to inform that the QMA will be updated to penalize companies that have an Accounts Receivable Turnover longer than 60 days (known as QMA 2).

However, this update will only be applied to fiscal years 2019 and before, for companies that have yet to receive their APA's final ruling, as the Mexican and US tax authorities are still in discussion of a new methodology for fiscal years 2020 and later, which will be known as the QMA 3, in consideration of the global pandemic effects.



# Tax Reform for 2022

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In September 2021, the Mexican tax authorities published the Tax Reform project for 2022, in which the Income Tax Law will determine that maquiladoras can no longer use the option of the APA to comply with Transfer Pricing regulations.

The only option left will be to comply through the Safe Harbor methodology.



# Implications

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For taxpayers with a current APA still pending resolution, this means the following:

On March 2021, the SAT published the QMA 2, the methodology which will be applied to fiscal years 2019 and before. Nevertheless, the methodology for fiscal years 2020 and later (QMA 3) has not been published yet. This means that for APAs that cover 2019 or before, as well as 2020 and later, the resolution may be with different methodologies and in different periods.

What will happen for companies who requested APAs that include, i.e. 2018-2022, in one ruling? The tax authorities will request the following:

- QMA 2: This methodology will be applied to fiscal years 2018 and 2019. To comply with formalities, the taxpayer will be required to submit a letter manifesting their intent to desist the ruling for 2020-2022.
- QMA 3: There is a possibility for companies to apply for a new APA, before December 2021, which covers 2020-2024

# To Get the Most Possible Years With an APA Resolution

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The taxpayer, in consideration of the Tax Reform project, must evaluate if they wish to apply for a new APA (2020-2024) before 2021 ends, so as to get the most possible years with an APA as possible, before they must comply with the Safe Harbor.

If a maquiladora is unwilling to comply with the Safe Harbor, a discussion must be had in order to consider other viable options on the taxpayer's business scheme.



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