Towards Commercial Rationality: HMRC's New Unilateral APA Process Will Reduce Uncertainty Over Cost-Sharing Participation

Skadden

July 3, 2025

If you have any questions regarding the matters discussed in this memorandum, please contact the following attorneys or call your regular Skadden contact.

Patrick J. O'Gara
Partner / London
44.20.7519.7097
patrick.ogara@skadden.com

Nathaniel Carden
Partner / Chicago
312.407.0905
nate.carden@skadden.com

Alex Rigby
European Counsel / London
44.20.7519.7016
alex.rigby@skadden.com

One Manhattan West
New York, NY 10001
212.735.3000

22 Bishopsgate
London EC2N 4BQ
44.20.7519.7000

320 S. Canal St.
Chicago, IL 60606
1.312.407.0700

Multinational groups adopting cost contribution arrangements (CCAs) (or cost share agreements, in US parlance) as part of their cross-border intellectual property (IP) development strategies have a new opportunity to simplify their UK tax planning with the recent release by HM Revenue and Customs (HMRC) of additional pages within the International Manual setting out new guidance (INTM422160) on unilateral advance pricing agreements (APAs), together with the draft text of a model APA (INTM422170).

The new guidance introduces a process for obtaining a unilateral APA with HMRC that specifically addresses the validity of a UK company's participation in a CCA. Multinationals with UK participants in CCAs thus will be able to secure prospective and (where appropriate) retrospective certainty, streamline compliance and focus on commercial growth rather than protracted tax disputes.

HM Treasury's policy review of the transfer pricing treatment of CCAs was first announced as part of the Corporate Tax Roadmap (Roadmap) published alongside the Autumn Budget in 2024. The government's aims were to protect the UK tax base whilst simultaneously encouraging inward investment that brings economic benefits to the UK by ensuring that the UK tax rules are certain and do not act as a deterrent.

At the Spring Statement in March 2025, HM Treasury subsequently announced that HMRC intends to offer clearance through APAs that would provide certainty that CCAs will be respected as the framework for pricing CCA transactions, recognizing that there were differing interpretations of the OECD Transfer Pricing Guidelines (OECD TPG) which increase the risk of disputes and double taxation.

The release of the June 2025 guidance is a clear and positive signal of the UK government's commitment to the stated aim of the Roadmap to provide "the stability needed for businesses to make investments that are critical to boosting growth in the UK."

Nevertheless, whilst the approach offers the prospect of much enhanced taxpayer certainty, we doubt there will be a stampede to HMRC's door in respect of new CCAs whilst the UK corporation tax rate remains at its current level.

Existing Compliance Challenges: Control of Development Risk

One of the most contentious issues for multinationals with UK participants in CCAs in recent years has been the question of whether that participation would be respected for UK tax purposes. Relying on Chapter VIII of the OECD TPG on CCAs (in particular, paragraph 8.15),[1] HMRC have enquired into a number of CCAs and scrutinised whether the UK participants exercise sufficient control over economically significant risks. This approach reflects HMRC's wider views on the importance of risk control in delineating transactions under the OECD TPG, as explained in their 2024 transfer pricing operational guidance on the accurate delineation of the actual transaction focusing on risk at INTM485025. Importantly, HMRC are clear that the unilateral APA offering should not be seen as a wider revision of this approach.

[1] "A party would also not be a participant in a CCA if it does not exercise control over the specific risks it assumes under the CCA and does not have the financial capacity to assume these risks, as this party would not be entitled to a share in the output that is the objective of the CCA based on the functions it actually performs. The general principles set out in Chapter I of these guidelines on the assumption of risks apply to situations involving CCAs…." OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations 2022 (OECD Publishing, Paris, 2022), at para. 8.15.

Towards Commercial Rationality: HMRC's New Unilateral APA Process Will Reduce Uncertainty Over Cost-Sharing Participation

HMRC's concerns regarding CCAs have included the potential impact on the UK tax base, particularly in the short or medium term where UK participants recognise: (a) significant amortization debits in relation to the capitalised costs of acquiring existing IP rights from affiliates on entering into CCAs, (b) the associated costs of borrowing to finance those investments, and (c) significant ongoing development costs. Taken together, these deductions have resulted in a number of UK participants recording significant year-on-year losses for UK corporation tax purposes, which were seen as a tax risk where those losses were set off against other sources of UK profit, for example through the UK's group relief system.

This has led HMRC to test and challenge the validity of UK participation in CCAs in circumstances where on the facts it was felt that either: (a) the transaction should be accurately delineated as an alternative arrangement, or (b) the CCA should be disregarded in light of the perceived lack of risk control in the UK (see paragraphs 1.142-1.144 of Chapter I and 8.40 of Chapter VIII of the OECD TPG).[2] Although the OECD TPG envisages that the ability to disregard a transaction should be used sparingly,[3] given the complexity of CCAs, the practical difference between an alternative delineation based on the UK's limited risk control activities and full disregard of the CCA has not always been obvious to taxpayers.

There has been controversy around whether these arrangements give rise to a UK tax advantage involving how this should be looked at from a timing perspective, which remains unresolved. However, in many cases HMRC have asserted that the transfer pricing rules are engaged. Moreover, given the UK transfer pricing rules' "one-way street" approach to, and period-by-period assessment of, arm's length adjustments, UK participants may not be permitted to recognise a corresponding reduction in profits recorded in subsequent years absent invoking the mutual agreement procedure (MAP) article in applicable tax treaties. This has resulted in significant uncertainty regarding the UK tax position, protracted enquiries, and the risk of double taxation.[4]

[2] "Where the arrangements viewed in their totality lack commercial rationality in accordance with the criteria in Section D.2 of Chapter I, the CCA may be disregarded." (OECD TPG, Para. 8.40).

[3] "Because non-recognition can be contentious and a source of double taxation, every effort should be made to determine the actual nature of the transaction and apply arm's length pricing to the accurately delineated transaction, and to ensure that non-recognition is not used simply because determining an arm's length price is difficult." (OECD TPG, Para. 1.142).

[4] Interestingly, as part of the recent wider consultation regarding the UK transfer pricing rules, HMRC invited comments regarding the impact of the "one-way street" but have so far declined to limit this principle other than in cases related to financial instruments, derivatives or to replace the existing two-way street market value rule applicable to the transfer of intangibles. This indicates that HMRC were previously unwilling to take a long-term view on a CCA to determine whether the UK's participation in a CCA would be accretive to the UK tax base in the round in the long run (as opposed to reviewing CCAs on a period-by-period basis).

Historic Context: Too Little, Too Late?

Many businesses were attracted to the UK investment case when the UK corporation tax rate was continuing on its long downward trend during the 2010s to 19% in April 2017, with the rate expected to move to the long-promised landing spot of 17% from April 2020, as announced by George Osborne, the then chancellor of the exchequer, in 2016. BEPS Action 2 (hybrids) was also prompting the movement onshore of IP located in low or no tax centres. Whilst the UK was looked upon favorably by many businesses throughout that time, it was generally viewed as a risky proposition for its perceived lack of fiscal stability.

Nearly 10 years (and seven chancellors of the exchequer and five prime ministers) later, the skeptics may well have been proved correct. For those businesses that did commit to the UK, HMRC's subsequent enquiries into early loss-making accounting periods of the CCAs have left many feeling that HMRC were second-guessing commercial decisions or looking to recognise profits without the related preceding costs. The UK's attractiveness as an investment hub has also been diminished by the leap in the UK's main rate of corporation tax from 19% pre-COVID to 25% in April 2023. In short, the UK has not offered the stable and predictable investment environment that many multinationals expected.

A New Approach: Certainty Through Unilateral APAs

The new guidance introduces a process for obtaining a unilateral APA that specifically addresses the validity of a UK company's participation in a CCA. HMRC considers the question of whether to accept a party as a valid participant in a CCA to be inherently complex for the purposes of entering the APA programme.

Under the new process, in circumstances where HMRC considers that a CCA is a commercially viable prospect and it is willing to enter into an APA, HMRC will confirm prospectively, and (where appropriate) retrospectively, that it will not challenge the UK participant's status as a party to the CCA under Part 4 TIOPA 2010. The APA will not seek to address all relevant aspects of the CCA, such as the pricing of contributions or share of benefits, but will instead provide targeted assurance that the UK entity's participation will not be disregarded on grounds of insufficient substance and that the taxpayer will be treated as a participant in the CCA at arm's length to the extent this is the contractual position.

Part 5 of TIOPA 2010 grants HMRC the power to agree to APAs with taxpayers, providing that any questions relating to the application of the UK's transfer pricing provisions with respect to a particular provision in a particular accounting period shall

Towards Commercial Rationality: HMRC's New Unilateral APA Process Will Reduce Uncertainty Over Cost-Sharing Participation

be determined in accordance with the agreement rather than in accordance with Part 4 TIOPA 2010. As a result, the proposed unilateral APAs can provide legally binding certainty that HMRC will respect a CCA involving a UK participant for the accounting periods covered by the agreement.

The new guidance reflects a more pragmatic and investment-friendly stance, with HMRC recognising the commercial decision-making of multinational groups. In the absence of an APA, the HMRC may continue to challenge arrangements on the basis of their interpretation of the risk control requirements within the OECD TPG where HMRC consider it sensible to do so on a risk-to-resource basis. However, HMRC's pragmatic approach recognises that commercially viable arrangements will generally be accretive to the UK tax base, given the realistic prospect of generating UK taxable profits across the CCA term in excess of those that would be earned if the participation was disregarded.

Key Features of the New CCA APA Process

- **Scope.** The CCA APA is focused solely on confirming the validity of the UK entity's participation in the CCA, rather than pricing the contributions or benefits.
- **Timing.** In light of the limited scope and application requirements, HMRC intend to agree to these unilateral APAs quickly and efficiently.
- **Application process.** Taxpayers can initiate the process by submitting an expression of interest to HMRC's BAI Transfer Pricing Team, supported by details of all relevant legal agreements and an explanation of the commercial rationale for the CCA. HMRC have indicated they will be requesting narrative information to understand the programs being developed under the arrangement rather than detailed forecasting.
- **Term.** While APAs typically cover a period of three to five years, HMRC recognises that the development of IP in CCAs may justify a longer term, potentially matching the duration of the CCA itself.
- **Rollback.** HMRC is open to applying the APA to historic periods, including those currently under enquiry, offering a valuable opportunity to resolve legacy issues and narrow the scope of ongoing disputes. This is a departure from HMRC's normal approach to APAs in these circumstances.
- **Critical assumptions.** The APA will include critical assumptions regarding the UK entity's contractual participation and the ongoing commercial viability of the arrangement. Under HMRC's sample agreement, HMRC has the unilateral right to revoke an APA if critical assumptions cease to be valid in future accounting periods.
- **Annual reporting.** Annual reporting is required to confirm continued compliance with the critical assumptions, as well as a statement explaining any material changes in the taxpayer's business operations in the period (or a confirmatory statement that no such changes have occurred).
- **Revocation.** If there are relevant legislative changes or changes to the OECD TPG, HMRC may revoke the APA (as with existing APAs), but otherwise the new offering provides robust protection for the taxpayer during its term.

Result of the APA

If an APA is agreed, under Part 5 TIOPA 2010 the relevant taxpayer would be deemed to be a valid participant during the APA term (intended to be coterminous with the CCA) notwithstanding the effect of the OECD TPG as applied by Part 4 TIOPA 2010.

As a result, Part 4 TIOPA 2010 would apply to require the taxpayer to recognise arm's length consideration in exchange for its exit from the CCA or any more limited change in its rights under the CCA even if such participant was not controlling risks arising from the CCA. As stated in the sample APA (INTM422170):

> "Throughout the term of the APA, Part 4 TIOPA 2010 will apply on the basis that the taxpayer is or was a participant in the CCA at arm's length to the extent this is or was the case contractually. For the avoidance of doubt, this APA does not determine the value of transfer prices in respect of CCA transactions. In particular, this APA does not resolve matters of valuation such as the expected share of benefits that will accrue to the parties, or the quantification of any other payments due by or to the Taxpayer as a consequence of CCA participation."

Moreover, HMRC may be willing to extend the scope of the APA to address related pricing issues on a bilateral basis with relevant treaty partners.

Towards Commercial Rationality: HMRC's New Unilateral APA Process Will Reduce Uncertainty Over Cost-Sharing Participation

A Positive Signal for Multinationals

The introduction of this unilateral APA process is a very welcome development. It demonstrates HMRC's willingness to provide certainty and to respect the commercial decision-making of multinational groups. By focusing on the validity of participation and offering the possibility of resolving historic periods under enquiry on this key issue, HMRC is helping to reduce uncertainty, avoid double taxation, and support the UK's reputation as a investment jurisdiction that is open for business, risk taking and innovation.

For multinational groups with UK participants in CCAs, this new process offers a valuable opportunity to secure prospective and retrospective certainty, streamline compliance, and focus on commercial growth rather than protracted tax disputes.

Partner **James Anderson** and associate **Lucy Foulkes** assisted in the preparation of this article.