

Paper for approval from the Transfer Pricing  
Subcommittee

**Bilateral Advance Pricing  
Agreement / Arrangement  
Programs**  
*Frequently Asked Questions  
(FAQs)*

## Table of Contents

Background .....	5
Introduction to APAs .....	6
Why and when to implement a bilateral APA program? .....	8
1.1    What are the advantages and disadvantages of an APA program? .....	8
1.2    At what stage might a country benefit from having an APA program?.....	9
1.3    What are the pros and cons of unilateral vs. bilateral APAs? .....	10
Legal framework: How to embed a bilateral APA program and APAs into a country’s legal system? .....	12
1.4    What international guidance is available and may be taken into account? .....	12
1.5    Does there need to be a legal basis for an APA in domestic law? If so, what should it cover? 12	
1.6    The way how to implement an APA outcome: Should the tax administration provide administrative guidance on the APA program? .....	12
1.7    How should APA programs be financed? Should taxpayers pay an application fee and if so, what amount? .....	13
1.8    Should tax administrations focus on particular types of transactions for APAs? ....	13
1.9    What is the relationship between an APA and a tax audit? .....	14
1.10   What is the relationship between an APA and administrative or judicial proceedings? 14	
Organizational design: How to integrate a bilateral APA program into a tax administration’s organizational structure? .....	15
1.11   How should the APA function be organized and where should it be located? .....	15
1.12   What considerations need to be taken into account regarding taxpayer information? 15	
1.13   Are exchanges of experience between authorities useful, and if so, how may this be approached?.....	15
1.14   What kind of meetings should be held virtually and which physically?.....	16
Meetings between the tax authorities and the taxpayer.....	16
Meetings between the competent authorities .....	16
Procedural issues: What to consider during a bilateral APA process?.....	17
1.15   What are the typical phases of an APA? .....	17
1.16   Should the phases follow a particular timeline?.....	17
Phase 1: Preliminary discussions between taxpayer and tax authorities / pre-filing .....	17
1.17   Should pre-filing meetings be mandatory? .....	17
1.18   What should be covered by preliminary discussions?.....	18
1.19   What should be avoided during pre-filing meetings? .....	18

1.20	How should the preliminary discussions take place?.....	18
1.21	Should the treaty partner be involved?.....	18
	Phase 2: Formal application by the taxpayer.....	19
1.22	What information needs to be provided by the taxpayer when submitting a formal APA application? .....	19
1.23	How can the application be submitted?.....	19
1.24	Which language can be used for filing?.....	19
1.25	Does the application need to be filed simultaneously in all jurisdictions? .....	20
	Phase 3: Decision on the acceptance of the application by the tax authorities .....	20
1.26	What should the acceptance process by the tax authorities be like? .....	20
1.27	What factors could have an impact on acceptance?.....	20
	Phase 4: Information gathering by tax authorities .....	21
1.28	What methods are available to collect information?.....	21
1.29	What documents can be requested during the information gathering phase? .....	21
1.30	When is joint information gathering appropriate? .....	21
	Phase 5: Analysis of information and preparation of position papers by the tax authorities.....	22
1.31	When should the analysis of the information and preparation of the position paper start? .....	22
1.32	What should position papers include?.....	22
	Phase 6: Negotiations and agreement between competent authorities.....	23
1.33	What should be the process of interaction with the taxpayer during the negotiation stage? .....	23
1.34	What elements need to be defined as result of the negotiation? .....	23
1.35	What is a common term length for an APA? .....	23
1.36	How is the APA concluded between tax authorities? .....	23
	Phase 7: Presentation to and acceptance of agreement by taxpayer and implementation....	24
1.37	Should the taxpayer be contacted prior to the final conclusion of the APA? .....	24
1.38	How is the APA formally accepted and implemented? .....	24
1.39	Should APAs be published?.....	24
	Phase 8: Post implementation and annual compliance monitoring.....	25
1.40	How should a concluded APA be monitored? .....	25
1.41	What should be part of the compliance report?.....	25
1.42	What needs to be done in case a taxpayer is in breach of a critical assumption specified in the APA?.....	26
1.43	When and how should an APA be renegotiated / renewed? .....	26
	Appendix .....	<b>Error! Bookmark not defined.</b>

Appendix 1: APA fees worldwide.....	27
Appendix 2: Key elements of APA guidance .....	29
Appendix 3: List of references for further information.....	30

## Background

This guidance was prepared by the UN Subcommittee on Transfer Pricing in response to the need, often expressed by developing countries, for practical advice in relation to Advance Pricing Agreement / Arrangement (APA) Programs. This guidance focuses on bilateral APA programs. However, parts of this guidance may also be considered valuable for the implementation of unilateral APA programs.<sup>1</sup> In order to provide meaningful and practical input, the guidance in this paper is structured in the form of frequently asked questions (FAQs). This means that, after a short introductory section on the basics of APAs, typical questions that might be taken into consideration when implementing a bilateral APA program are addressed in a simple and practical way based on best practices and country experiences.

The FAQs are structured under four categories as follows:

- 1) Why and when to implement a bilateral APA program;
- 2) How to embed bilateral APAs into the legal system of a country;
- 3) How to integrate the bilateral APA program into the organisational structure of tax authorities; and
- 4) What to consider during a bilateral APA process.

It should also be noted that this guidance strives to give answers to difficult questions. Not all questions / answers will be relevant to all countries and their particular challenges. As a result, this guidance should be taken only as an indicative guide. Also to be considered is the guidance mentioned in section 4.1 of this document.

---

<sup>1</sup> Especially sections 2 and 3 as well as phase 1 through 4 and phase 8 of section 4.

## Introduction to APAs

Transfer pricing issues are frequently contentious and controversial. Tax authorities focusing on domestic revenue mobilization aim to avoid base erosion through assuring compliance with transfer pricing rules and taxpayers aim to operate their businesses as tax efficiently as possible. Traditional enforcement often polarizes the views of the tax authorities and taxpayers in this respect, creating an adversarial environment that may be unfavourable for determining the arm's length price or return for a particular transaction. Enforcement alone is not necessarily the most effective means of ensuring overall compliance with the arm's length principle by taxpayers. Alternative dispute prevention and resolution options are therefore worth exploring in the field of transfer pricing. Advance pricing agreements / arrangements<sup>2</sup> (APAs) can be one such tool for dispute prevention and in some cases also resolution. APA programs have already been successfully implemented in more than 60 States.

Tax certainty is important for tax authorities and taxpayers alike. The interpretation and application of tax treaties, domestic tax law, and the interaction of the two, can be sources of tax uncertainty.<sup>3</sup> Taxpayers and tax authorities are increasingly concerned about tax uncertainty.<sup>4</sup> Evidence suggests that tax uncertainty hinders investment.<sup>5</sup> One way to avoid tax uncertainty stemming from tax audits is for taxpayers to request a tax ruling<sup>6</sup> in advance of entering into the transaction or arrangement (or filing the relevant return).<sup>7</sup> In the area of transfer pricing, bilateral APAs may be considered as a kind of tax ruling that can provide a high degree of tax certainty for both taxpayers and tax authorities.

An APA is an agreement with respect to certain transfer pricing aspects of the related party transaction or transactions, which determines in advance the appropriate criteria for determining transfer prices.<sup>8</sup> The scope of an APA could be, for instance, the remuneration for an intercompany transaction or function, including the method selection and the functional profile of involved parties. The APA applies for a fixed period of time.

---

<sup>2</sup> Both terms are common: The UN Practical Manual on Transfer Pricing in section 10.2.5 speaks of both agreements and arrangements while the UN Handbook on the Avoidance and Resolution of Tax Disputes in section 2.3.3 as well as the OECD Bilateral Advance Pricing Arrangement Manual speak of arrangements.

<sup>3</sup> Chen, A., Hieber, P. & Sureth-Sloane, C. (2022). Pay for Tax Certainty? Advance Tax Rulings for Risky Investment under Multi-Dimensional Tax Uncertainty. TAF Working Paper, University Paderborn.

<sup>4</sup> IMF and OECD (2019). Progress report on tax certainty. IMF/OECD Report for the G20 Finance Ministers and Central Bank Governors. Available from [Memo \(imf.org\)](#); Hoppe, T, Schanz, D., Sturm, S. & Sureth-Sloane, C. (2023). The Tax Complexity Index. A Survey-Based Country Measure of Tax, European Accounting Review Code and Framework Complexity, European Accounting Review.

<sup>5</sup> IMF and OECD (2019). Progress report on tax certainty. IMF/OECD Report for the G20 Finance Ministers and Central Bank Governors. Available from [Memo \(imf.org\)](#); Edmiston, K.D. (2004). Tax uncertainty and investment: A cross-country empirical examination. *Economic Inquiry*, 42(3).

<sup>6</sup> The term "tax ruling" is sometimes used pejoratively to describe the practice by tax administrations of granting a taxpayer unilateral tax relief or favourable tax treatment that is not in line with the arm's length principle or other international tax standards. Rather, a tax ruling is simply an instrument issued by a tax authority which sets out the authority's interpretation of the tax law or regulations in certain circumstances. For example, a taxpayer may be able to request a ruling to confirm an arm's length price or whether a payment is subject to withholding tax. Where a taxpayer is entitled to rely on the ruling, it can provide tax certainty. An APA can therefore be seen as a type of tax ruling; and provided the interpretation contained in the APA is in line with the arm's length principle, it would be in line with international tax standards.

<sup>7</sup> Neuman, S., Omer, T. & Schmidt, A. (2020). Assessing Tax Risk: Practitioner Perspectives, *Contemporary Accounting Research*, 37(3).

<sup>8</sup> UN Practical Manual on Transfer Pricing for Developing Countries (2021).

In order to comply with domestic law and the requirements of applicable double tax treaties, the criteria described in the APA and the resulting prices or profits for transactions between associated enterprises need to comply with the arm's length principle. The criteria included in the APA set out the most appropriate transfer pricing method (or methods), the comparables used and any comparability adjustments applied. For example, the APA may set out how to determine the arm's length price for the purchase of intermediate products from an associated enterprise or the arm's length remuneration for certain services provided to or from an associated enterprise. An APA is formally initiated by a taxpayer.

An APA can be concluded unilaterally, bilaterally or multilaterally.<sup>9</sup> Unilateral APAs are concluded between a taxpayer and their tax authority. Bilateral or multilateral APAs are concluded between the tax authorities and implemented if taxpayers agree. Many countries have introduced measures to provide for APA programs in their domestic laws although the programs may have different legal forms. In some countries, an APA is a legally binding agreement between taxpayers and tax authorities; in other countries, it may be a more informal arrangement between the tax authority and the taxpayer.<sup>10</sup>

In order for APA programs to be attractive for taxpayers, the advantages of an APA (such as greater tax certainty) need to outweigh the disadvantages (such as increased up-front compliance cost,<sup>11</sup> and potentially increased risk of inspection and risk of detection in case of non-compliance).<sup>12</sup> To be attractive for tax authorities, APAs should provide them with structured and high quality taxpayer information and allow for simplified compliance checks of taxpayers that entered into an APA. Ideally, APA programs build trust between taxpayers and tax authorities, help to monitor/spare audit resources, shorten audit periods, lead to overall lower compliance cost, and mitigate the risk of tax disputes and double taxation. These factors should be taken into consideration when designing an APA program to ensure that APAs provide a benefit to the administration and are a service to taxpayers.<sup>13</sup> It is therefore important that appropriate capacity be available in the tax administration to handle APAs, including, for example, in terms of response time, volume of requests and complexity of cases. Taxpayers may be asked to pay a fee for an APA to cover the associated costs.<sup>14</sup>

---

<sup>9</sup> United Nations (2021). Handbook on Dispute Avoidance and Resolution. Available from [Publications | Financing for Sustainable Development Office \(un.org\)](#)

<sup>10</sup> United Nations (2021). Practical Manual on Transfer Pricing for Developing Countries. Available from <https://financing.desa.un.org/what-we-do/ECOSOC/tax-committee/publications>. See 10.2.5.1.

<sup>11</sup> De Waegenaere, A., Sansing, R. & Wielhouwer, J. (2007). Using Bilateral Advance Pricing Agreements to Resolve Tax Transfer Pricing Disputes. *National Tax Journal*, 60(2); Becker, J, Davies, R. & Jakobs, G. (2017). The economics of advance pricing agreements, *Journal of Economic Behavior & Organization*, 134(C).

<sup>12</sup> Givati, Y. (2009). Resolving Legal Uncertainty. *The Unfulfilled Promise of Advance Tax Rulings*, *Virginia Tax Review*, 29.

<sup>13</sup> United Nations (2021). Practical Manual on Transfer Pricing. Available from [Publications | Financing for Sustainable Development Office \(un.org\)](#). See 10.2.5.2.

<sup>14</sup> This is discussed in more detail in paragraph 3.

## Why and when to implement a bilateral APA program?

### 1.1 What are the advantages and disadvantages of an APA program?<sup>15</sup>

The APA process allows parties to discuss matters in advance in a non-adversarial setting (in comparison to an audit), with a view to coming to a mutually satisfactory solution that applies the arm's length principle and is tailor-made to the specific facts of the taxpayer. Importantly, an APA reduces the burden on the taxpayer of dealing separately with various teams<sup>16</sup> of the tax authorities involved with transfer pricing. Thus, an APA may prevent costly and time-consuming examinations and litigation of major transfer pricing issues for taxpayers and tax administrations.<sup>17</sup>

An APA program requires qualified staff. Ideally, a bilateral APA team would be a multidisciplinary team with central coordination or oversight, composed of tax authority personnel with experience in transfer pricing examination (who may also include economists, legal and/or accounting specialists), competent authority negotiation and team members with industry knowledge. The involvement of experienced and skilled staff can help reduce administrative and compliance costs.<sup>18</sup>

For tax authorities, an APA can offer a “one-stop shop” approach that is an effective alternative for avoiding and resolving transfer pricing disputes. The APA negotiations should be in an environment that encourages common understanding and cooperation between the taxpayer, respective tax authorities and the competent authorities. An APA is also a way for tax authorities to better understand business operations and industries that may be important contributors to the local economy and improve the technical skills of tax authority officials.

Through the APA submission and subsequent discussions, tax authorities and taxpayers should agree on what information is relevant for a thorough understanding of relevant aspects of the taxpayer's business. This agreement can help to focus the efforts of the tax authorities. The APA discussions can also serve to allow for a more focused review of the submitted data and information.

An APA can “lock-in” future compliance and assist with resolving long-standing audit issues, taking the adversarial edge out of taxpayer interaction with tax authorities. In doing so, an APA can also avoid extended disputes and litigation. At the same time, the process allows for a rigorous review of the taxpayer's related party transactions and how they are priced. The APA process may also provide for an opportunity to resolve issues in prior years by rolling back the agreed APA pricing methodology to those prior periods.

Furthermore, an APA does not shelter a taxpayer from tax authority review regarding other activities or transactions not covered by the APA, or from a review as to whether the taxpayer has complied in good faith with the agreed terms of the APA. There is no obligation on the tax

---

<sup>15</sup> Office of Associate Chief Counsel (International) (1994). The Advance Pricing Agreement Program (APA): A Model Alternative Dispute Resolution Process.

<sup>16</sup> On this see also Question 5.1.

<sup>17</sup> See also UN Practical Manual on Transfer Pricing at 15.3.4.5.

<sup>18</sup> The same applies for a unilateral APA team, although in that case, no current competent authority input will be required.



authorities to renew the APA after expiration, but they may agree to do so if taxpayers apply for a renewal.

From the taxpayer's perspective, obligations associated with an APA include a requirement to provide detailed industry as well as taxpayer and transaction specific information up-front. The APA process typically requires the provision of annual reports or information on how the APA was applied to taxable years covered by the APA, describing the taxpayer's actual operations for the year and demonstrating good faith compliance with the terms and conditions of the APA.<sup>19</sup>

For tax authorities, a disadvantage of an APA program may be that the process may limit the tax authority's discretion in terms of the deployment of its resources, since an APA request is initiated by the taxpayer and the tax authority would need to respond to that request in accordance with established processes. A country's APA guidelines could make it clear that acceptance of an APA application will depend on several facts, including the complexity of the transaction and whether there is a high likelihood of tax controversy.

For many tax administrations retaining experienced and well-trained officials may be a big challenge. A side effect of having an APA programme may be that the special skills of the tax officials become more exposed to the private sector participants in the negotiations. This may be a factor to be taken into consideration as an organizational matter but it is not a weakness of APAs as such. Neither should it be seen as an argument against developing APA skills and experience in the tax administration. Such skills and experience that may be developed through negotiating APAs could be a useful addition to the capacity of the organization.

## 1.2 At what stage might a country benefit from having an APA program?

An APA program potentially ties up resources at different levels of the tax authorities at the same time. Some tax authorities therefore may prefer to only implement an APA program once they have developed sufficient capacity. However, other tax authorities see the experience gained in concluding APAs as an important part of capacity building on transfer pricing issues and may thus prefer to implement an APA program earlier in their journey to develop transfer pricing teams.<sup>20</sup>

Some countries may be reluctant to implement APA programs because they may be sought by multinational companies with a low transfer pricing risk, resulting in an unnecessary use of resources. Similar to tax dispute settlement mechanisms, checks and balances must be provided to ensure that the APA process is applied consistently between taxpayers and is not subject to abuse or integrity issues.<sup>21</sup>

Tax administrations with severe resource limitations may wish to weigh the advantages of APAs against other resource needs. It may be difficult, for example, for a tax administration that is still developing its general audit capabilities to feel comfortable diverting substantial resources to an APA programme at that stage. Such countries may also be concerned that they

---

<sup>19</sup> This applies regardless of whether the APA is a bilateral or a unilateral APA.

<sup>20</sup> See UN Practical Manual on Transfer Pricing, 10.2.5.3.

<sup>21</sup> See UN Practical Manual on Transfer Pricing. The issues involved in balancing resource issues and priorities with the potential benefits of APAs are discussed in more detail at 15.3.4.

will be at a disadvantage in negotiating APAs with MNEs or more experienced countries until they develop more experience, including experience with mutual agreement procedure (MAP) cases. On the other hand, APAs can be useful on an interim basis as an efficient means of collecting tax in the short term, particularly in countries with a small number of large foreign MNEs.

It can also help, at an early stage of transfer pricing rules implementation, to have a consistent approach and to develop a single industry approach. Where a tax authority has implemented an APA program early in its journey to develop transfer pricing experience, a centralised approach to managing APAs, or a focus on particular sectors and industries can be a useful way to help develop and strengthen knowledge, experience and best practices. The experience gained by tax administration staff may also be useful in the development of additional transfer pricing regulations or other guidance. Since an APA can be a more efficient process than an audit, an APA can conserve audit resources, but cannot replace the need for trained audit staff.<sup>22</sup>

Countries with limited experience in applying a transfer pricing regime may initially prefer to limit the types of APAs and the term of their APAs; the tax authority can then evaluate its experience more quickly and further develop or adjust its practices as needed. With regard to the term of APAs, a term of five years is most commonly used by experienced tax administrations. This term could, after weighing up the pros and cons, in an introductory phase be limited to three years. A shorter term would mean that the taxpayer and tax authorities are bound by the agreement for a shorter period of time.<sup>23</sup> Alternatively, it could be considered to launch a pilot APA programme before committing to a generally available, permanent programme.<sup>24</sup>

### 1.3 What are the pros and cons of unilateral vs. bilateral APAs?

Some countries issue unilateral APAs. Unilateral APAs only involve the taxpayer and the local tax administration and, while they may be useful, do not offer a comprehensive solution for double taxation as they include only an agreement with one country building on this country's factual and legal assessment which other countries might not necessarily share.

Unilateral APAs involve an agreement between the tax authority and a taxpayer in the same country on essentially three aspects: (1) the relevant facts, (2) the transfer pricing method used and (3) the results from the application of that transfer pricing method to a certain number of years considering the relevant facts. Procedurally, the unilateral APA functions as a determination agreement or ruling on transfer pricing for the relevant taxpayer.

A unilateral APA does not bind any foreign government or foreign taxpayer that is also a party to, or may be affected by, the related party transactions covered by the unilateral APA. While Action 5 of the OECD BEPS project (the Transparency Framework under the Harmful Tax Practices action) requires the spontaneous exchange of information on unilateral APAs to relevant jurisdictions, unilateral APAs also provide no rights to taxpayers in a foreign jurisdiction that are not party to the APA. A unilateral APA therefore does not preclude discussion of the same matters under a MAP (where there is a treaty providing for such), should

---

<sup>23</sup> See also Section 4, Phase 6, Question 6 on APA terms.

<sup>24</sup> See UN Practical Manual on Transfer Pricing, 15.3.4.9.

another tax authority challenge the agreed solution with a tax reassessment. That said, unilateral APAs can provide for certainty and dispute prevention in the issuing jurisdiction. Furthermore, many countries historically have started with unilateral APAs before they established a bilateral APA program. Presently, however, many countries are moving away from granting unilateral agreements, in favour of bilateral APA programs.

A benefit of unilateral APAs is that they tend to be finalised more swiftly than bilateral APAs, since the latter require a separate layer of review, negotiation and approval by the relevant competent authorities. Unilateral APAs can also be useful in the absence of a bilateral tax treaty for the avoidance of double taxation, as taxpayers may choose to obtain matching unilateral agreements in both countries involved with the same cross-border transaction, in that way reducing exposure to double taxation.

Bilateral APAs, on the other hand, provide greater certainty for the taxpayer on the taxation of certain cross-border transactions and can ensure double taxation is avoided because the competent authorities of the countries involved agree on a common understanding of the tax treaty in light of the UN/OECD Transfer Pricing Guidelines. Procedurally, bilateral APAs incorporate an agreement between the competent authorities setting out how arm's length conditions are to be determined for the covered transactions, mirrored in domestic determinations or rulings between the relevant taxpayers and their tax authorities.

A downside of bilateral APAs may be that they typically take longer to conclude. This is because the progress of the APA is dependent on the agenda and resources of two separate tax authorities to dedicate resources for the analysis and negotiation of the APA request. The time taken may also depend on the robustness of the tax treaty relationship between the relevant competent authorities. Furthermore, taxpayers might seek assurances how the information they provide in the course of an APA is used by the countries' tax administrations.<sup>25</sup>

---

<sup>25</sup> See also 5.2.

## Legal framework: How to embed a bilateral APA program and APAs into a country's legal system?

### 1.4 What international guidance is available and may be taken into account?

Guidance on APAs is provided in the UN Transfer Pricing Manual in sections 10.2.5. and 15.3.4. f. as well as in the Dispute Resolution and Avoidance Handbook in section 2.3.3. The OECD Transfer Pricing Guidelines include guidance on APAs at Section F of Chapter IV. The Forum on Tax Administration's MAP Forum, in conjunction with the Forum on Tax Administration Large Business International Programme, has developed the Bilateral Advance Pricing Arrangement Manual which is intended as a guide for streamlining the bilateral APA process.<sup>26</sup> The World Bank's Handbook *Transfer Pricing and Developing Economies* also contains a section on APAs.<sup>27</sup>

### 1.5 Does there need to be a legal basis for an APA in domestic law? If so, what should it cover?

The legal basis for APAs concluded under bilateral tax treaties are provisions that resemble Article 25(3) of the UN (or OECD) Model Tax Convention.<sup>28</sup> These provisions do not explicitly state the requirements and procedural rules for APAs but rather implicitly allow for the signatories to conclude APAs. As such it may be advisable to provide for details and authority to enter into APAs in domestic law or in administrative guidance. Common law jurisdictions, in particular, may require only administrative guidance. Further, a general provision allowing for the issue of rulings may be a sufficient legal basis for APAs.

Alternatively, some jurisdictions may prefer to provide a specific provision in domestic law.<sup>29</sup> This provision could address:

- The circumstances under which an APA can be requested,
- The taxpayers that are eligible to request an APA,
- The application process including form, deadlines and cost,
- The responsible authority,
- Which timeframe can be covered by an APA and
- Whether roll-backs are possible.

### 1.6 The way how to implement an APA outcome: Should the tax administration provide administrative guidance on the APA program?

---

<sup>26</sup> OECD (2022). Bilateral Advance Pricing Arrangement Manual. OECD Publishing, Paris. Available from <https://doi.org/10.1787/4aa570e1-en>.

<sup>27</sup> Cooper, J. & Fox, R. et al. (2016). Transfer pricing and developing economies : a handbook for policy makers and practitioners. Available from <http://dx.doi.org/10.1596/978-1-4648-0969-9>. See p. 319 et seq.

<sup>28</sup> See para. 10 of the Commentary on Art. 25 of the UN-MTC; para. 52 of the Commentary on Art. 25 of the OECD-MTC.

<sup>29</sup> This would probably also be required in case of a unilateral APA program.

As mentioned in 4.2, a jurisdiction’s APA program may be implemented administratively. If there is a provision for APAs in a statute, further administrative guidance may still be helpful to set out additional details or processes. It is important to make sure that such guidance is publicly available and accessible, ideally on the tax administration’s webpage.

### 1.7 How should APA programs be financed? Should taxpayers pay an application fee and if so, what amount?

In contrast to audits or other retrospective assessments, APAs are, to a large extent, not only in the interest of tax authorities but additionally serve the interest of taxpayers because they can achieve legal certainty for covered transactions.

APAs are voluntary compliance measures and as such, the benefits to taxpayers and the administrative cost to tax authorities could justify the charging of an application fee. While fees might be a deterrent to the taxpayer’s applying for an APA, the fees could also have the effect of reducing applications in immaterial cases and poorly prepared applications (experience shows that a fee leads taxpayers to be well-prepared). Fees may also assist to avoid frivolous applications that are nothing more than “forum shopping” by taxpayers.

Some jurisdictions do not charge application fees. Other tax authorities seek only a reimbursement for certain government expenses such as travel expenses (e.g., Malaysia, New Zealand). Those that charge fees may charge a fixed amount (though there may be different fee brackets depending on the volume of the transaction or the turnover of the taxpayer) or seek a reimbursement of all direct costs incurred (e.g., including hourly rates for the officials assessing the application, travel costs, interpretation / translation costs, etc.). For details see Appendix 1.

With respect to Small and Medium sized Enterprises (SMEs), a distinction may be drawn in particular as regards the fee for APA applications. Lower fees for SMEs take the taxpayers’ ability to pay into account.

### 1.8 Should tax administrations focus on particular types of transactions for APAs?

Many tax authorities prefer to limit the availability of APAs to certain kinds of transactions, particularly in the early stages of implementing an APA program. For instance, the tax authority may focus on simpler transaction types or particular industries, in order to build experience and knowledge. On the other hand, many jurisdictions find APAs can be particularly useful in complex<sup>30</sup> or novel transfer pricing cases that require maximum cooperation from the taxpayer.

Countries at the beginning of their APA program may want to consider prioritizing cases in certain industries or sectors that are especially significant in their economy (for example, in the area of extractive industries for resource-rich countries) in order to gain or utilise industry-specific knowledge. Several countries with well-developed APA programs today started out with a limited-scope APA program; for example, the Netherlands introduced their APA program in 1994 and only as of 2024 included financial transactions in its APA program.

It may seem logical to prioritize high-volume transactions because legal certainty may be considered more important with increasing transaction volumes with an expected efficiency

---

<sup>30</sup> See UN Practical Manual on Transfer Pricing, 15.3.5.4.

benefit. Nevertheless, a one-dimensional approach may be subject to the following shortcomings. First, the importance of a transaction for a single taxpayer/group depends on the ratio of a transaction's volume to the overall business of the taxpayer. Second, the importance of a transaction for a taxpayer not only depends on the volume of a transaction but also on other factors, such as business restructuring considerations. Finally, the legal complexity of an issue may not correlate with the transaction volume.

### 1.9 What is the relationship between an APA and a tax audit?

APAs are concluded in respect of future transactions and, thus, there should not be a direct interaction between tax audits relating to prior years and APAs. However, there are some exceptions where there are linkages between audits and APAs:

- (1) APAs may in practice cover transactions that have taken place in the past, either due to the time taken to negotiate the APA, or where a roll-back of the APA terms can be agreed. In these cases, it is relevant that the APA is concluded with the whole picture in mind. Well-developed transfer pricing documentation covering past and current transactions would be beneficial and could be requested by the tax authority, if not already provided by the taxpayer to understand past and future transactions.
- (2) Only a concluded APA provides protection from audit. If an APA application is made during a current audit, the application should not affect the audit. A taxpayer should be able to confirm whether the proposed APA transaction is under audit before requesting an APA. Where permitted by law, the tax authority may agree in some cases to suspend a tax audit if the results of the APA can be reliably applied to the transaction, which is the subject of the tax audit, by allowing a "roll-back" of the APA term to prior years. Similarly, the tax authority may agree to suspend the "roll-forward" of an audit (or refrain from the commencement of a new audit), pending the successful conclusion of the APA in cases where an APA takes a significant time to conclude, resulting in an open year or years between the end of the existing audit period and the start of the period covered by the concluded APA.
- (3) APAs may be based on the outcomes of a tax audit – especially a joint tax audit – where the agreed criteria for determining arm's length transfer prices would be relevant to future transactions.

### 1.10 What is the relationship between an APA and administrative or judicial proceedings?

An APA application should have no direct effect on administrative or judicial proceedings. However, in some cases, administrative proceedings may be suspended (with mutual consent) where the APA terms, by way of a roll-back, can be reliably applied to the matters that are the subject of the administrative proceedings. Suspending APA negotiations in light of administrative or judicial proceedings, however, should be considered very carefully and only occur in very exceptional cases as doing so endangers the conclusion of an APA before the transaction is performed.

## Organizational design: How to integrate a bilateral APA program into a tax administration's organizational structure?

### 1.11 How should the APA function be organized and where should it be located?

As set out in the UN TP Manual in section 15.3.5.1 f., there are advantages to having APAs managed by a special team or unit within the tax authority. Having a centralized team may allow for improved coordination. Many jurisdictions that have established APA programs have found that combining MAP and APA functions can be efficient because of their structural similarities. On the other hand, placing the APA function within audit teams can result in challenges to the appropriate use of information.

Audit teams monitor a taxpayer's compliance with the APA. Typically, APAs will require the taxpayer to report on its compliance with the terms of the APA on an annual basis, and to confirm that the critical assumptions on which the APA terms are based remain valid. The tax authority would need to undertake due diligence to verify these reports.<sup>31</sup>

Centralized transfer pricing units in a tax administration may also be helpful. Centralization should ensure a consistent transfer pricing approach and appropriate allocation of resources.

### 1.12 What considerations need to be taken into account regarding taxpayer information?

As with all taxpayer information, it is important to ensure that information received in the course of the APA process satisfies the country's confidentiality requirements.

There is a further question in regard to the circumstances in which information provided in the course of the APA may be shared with other parts of the tax administration, including audit teams. This depends on the countries' domestic law. Some tax administrations provide taxpayers with assurances that information provided for the purposes of an APA will not be used for any other purpose, including audit or other compliance activity. Such assurances should be given in order to provide taxpayers with confidence to provide full and candid disclosures of information for the APA.

However, in other countries, factual information provided in the course of an APA process may indeed be shared (where relevant) with other parts of the tax administration, for the purpose of administering the relevant income tax law(s). Nevertheless, in order to maintain taxpayer confidence in the process, the APA process should not be used as a "fishing expedition" to obtain information specifically for audits.

### 1.13 Are exchanges of experience between authorities useful, and if so, how may this be approached?

---

<sup>31</sup> The APA terms should set out the available remedies in the event a critical assumption is no longer valid. These could include cancellation, amendment or renegotiation of the APA.

Developing countries starting an APA program may benefit from a dialogue with countries that have well-developed APA programs, particularly with regards to the procedural aspects. This may be structured along the lines of the Tax Inspectors Without Borders program (TIWB) through which expert APA staff from experienced administrations assist other administrations in order to build APA capacity.

#### 1.14 What kind of meetings should be held virtually and which physically?

##### Meetings between the tax authorities and the taxpayer

The APA process may benefit from a pre-filing meeting, which is a meeting in which the taxpayer or its representatives and the tax authority meet to assess whether the envisaged APA request is appropriate for submission. In some countries, initial pre-filing discussions can take place anonymously. One purpose of a pre-filing meeting is to generate trust and it is the first opportunity to discuss in detail mutual expectations for the APA process to come, an in-person meeting may be preferred over a virtual meeting.

The APA process often involves at least one or two meetings where the entire APA team and the taxpayer with representatives are present. In the course of these meetings, further questions may be asked, additional information requested, and the taxpayer's legal assessment may be discussed. These meetings can take place virtually but may benefit from in-person attendance.

##### Meetings between the competent authorities

The availability of virtual meetings and conference calls has the benefit of efficiency in that they save both time and expenses for travel and thus enable more frequent discussions between competent authorities. However, it should be kept in mind that trusting and fruitful discussions between competent authorities may be facilitated by in-person meetings. In this regard, it can be very beneficial to have in-person meetings from time to time. Question 4.4 notes that some administrations require taxpayers to reimburse necessary travel expenses for such meetings.



## Procedural issues: What to consider during a bilateral APA process?

### 1.15 What are the typical phases of an APA?

A bilateral APA process may differ depending on the case, and different administrations may classify the phases of the process differently. The following therefore provides only a guide:

- 1) Preliminary discussions between taxpayer and tax authorities / pre-filing
- 2) Formal application by the taxpayer to both tax authorities
- 3) Decision on the acceptance by both tax authorities
- 4) Information gathering by both tax authorities
- 5) Analysis of information and preparation of position papers by both competent authorities
- 6) Negotiations and agreement between competent authorities
- 7) Presentation to and acceptance of agreement between taxpayer and both authorities and domestic implementation
- 8) Post implementation and annual compliance monitoring<sup>32</sup>

### 1.16 Should the phases follow a particular timeline?

Acknowledging that the first APAs while establishing an APA program can take a longer time and the time needed depends on the complexity of a case, an ambitious but realistic timeframe for APAs may be two to three years from application to agreement. In the beginning of an APA process, a tentative timeline may be agreed upon between competent authorities and taxpayers to provide an incentive for all parties to negotiate and conclude the APA in a timely manner.

#### Phase 1: Preliminary discussions between taxpayer and tax authorities / pre-filing

### 1.17 Should pre-filing meetings be mandatory?

A pre-filing meeting may help improve the efficiency of the APA process and it is obligatory in some countries. For less complex and ongoing transactions, a pre-filing meeting may be less important.

Where there is a fee for an APA application, pre-filing meetings are generally held free-of-charge. In this case, having a pre-filing meeting is in the interest of taxpayers and will usually be requested. Having such a preliminary discussion can be a way to save resources as the pre-filing meeting allows both parties to explain their positions, provides an opportunity to clearly state expectations and ensures that the APA application has a reasonable chance of success.

---

<sup>32</sup> For a unilateral APA, the same process is followed, but by just one tax authority usually without involvement of the competent authority (item 6).

## 1.18 What should be covered by preliminary discussions?

Preliminary discussions might expedite the subsequent formal process and identify at an early stage when an APA may not be beneficial and / or successful. The discussions may include some of the following:

- the introduction of the responsible individuals for both the taxpayer and tax authorities,
- the expected APA outcomes (i.e. what is the desired goal of the APA),
- the term of the proposed APA,
- an overview of the facts including the business model,
- a high-level functional analysis and the covered transactions,
- whether the transactions are or have been subject to an audit,
- expectations and objectives of tax authorities,
- foreseeable obstacles as regards the envisioned transfer pricing set-up and initial feedback by tax authorities,
- discussion on realistic timing including resources available and milestones as well as frequent touch-points / physical meetings,
- details on the formal APA procedure based on local legislation including language and submission procedures,
- provision of further guidance for taxpayers.

## 1.19 What should be avoided during pre-filing meetings?

To ensure a fair and symmetric information flow, the information provided in one jurisdiction should also be provided to the corresponding jurisdiction. As a bilateral agreement between the authorities is required, competent authorities should not unilaterally agree to any position. This does not mean, however, that competent authorities cannot highlight their “red lines” in a pre-filing meeting. These “red lines” may stem from national law or other requirements in their jurisdiction (i.e. specific TP methods, type of information to provide, kind of intra-group relationships).

## 1.20 How should the preliminary discussions take place?

A regular use of emails, calls and videoconferences allows for more flexible scheduling and faster processes. In addition, frequent secure electronic communication can help to involve taxpayers and tax authorities from all involved countries. Nevertheless, physical meetings can help to build more trust and should be taken into consideration especially at the beginning of the process and for more complex cases.

## 1.21 Should the treaty partner be involved?

Pre-filing meetings may initially take place in the respective jurisdiction(s) separately. The competent authorities generally only contact one another after the filing of the APA request. However, in the light of greater collaboration between authorities, informal discussions may take place at an earlier stage. For instance, after the pre-filing meetings have taken place, tax authorities might arrange for a call to agree whether to accept the APA into their respective

APA programs. Joint pre-filing meetings could be considered, although they are not regularly observed in practice.

## Phase 2: Formal application by the taxpayer

### 1.22 What information needs to be provided by the taxpayer when submitting a formal APA application?

The goal of the APA application is to provide the tax authorities with all relevant information in respect of the covered transactions and the proposed arm's length price or result. With that in mind, an application would typically include the following information:

- The accurately delineated covered transaction(s) including: information on the underlying contracts; if applicable, information on transactions that are not to be covered by the APA and reasons why they are not intended to be covered;
- Taxpayers involved (legal entities and permanent establishments) including respective countries and tax identification numbers;
- General information regarding the global organisational structure and the group's activities, financial statements, products, functions, risks and assets;
- Description of industry and market conditions including competitive situation;
- Description of the most appropriate transfer pricing methodology being proposed
- Information / analysis on how the proposed TP methodology would be applied, including a comparability study, any necessary adjustments and critical assumptions;
- Reasoning for the proposed transfer pricing analysis;
- Intended term of the APA;
- The relevant contact persons and proof of their authority to negotiate on behalf of the taxpayer (i.e. a power of attorney if common practice in the country).

### 1.23 How can the application be submitted?

Digital submission of the application may be required or allowed depending on the legal and procedural requirements in the tax jurisdiction, for example, with respect to domestic law including data protection and data privacy as well as the digital infrastructure of the tax authorities. Electronic submission either via an official portal or via email has the potential to improve the APA process provided the data are secure. In order to provide legal certainty for the taxpayer, it is recommended that the submission procedure is defined in national law or APA administrative guidance.

### 1.24 Which language can be used for filing?

Whether a language other than the official language(s) are allowed will depend on domestic law. Many tax authorities have had good experiences with an English submission while requiring a translation of the application or parts thereof upon request. In order to provide legal certainty for the taxpayer, it is recommended that language requirements are defined in national law or in APA administrative guidance.

## 1.25 Does the application need to be filed simultaneously in all jurisdictions?

In order to avoid information asymmetry and a delay of the process, a simultaneous submission rather than sequentially submitted applications is preferable.

### Phase 3: Decision on the acceptance of the application by the tax authorities

## 1.26 What should the acceptance process by the tax authorities be like?

The acceptance of the application is at the discretion of the respective competent authorities. There is no obligation for a competent authority to accept an application. However, there should be good reasons not to accept an application. If an application is rejected by a tax authority, an explanation of these reasons is usually provided to maintain a collaborative environment between competent authorities and the taxpayers. Taxpayers may also have the opportunity to amend and re-submit the application, possibly without another application fee.

The acceptance can happen either automatically without detailed review or after review and potential back-and-forth with taxpayers.

Taxpayers and tax authorities may agree upon a project plan including timing after the formal acceptance for the next steps.

## 1.27 What factors could have an impact on acceptance?

An incomplete application would typically result in a rejection of the application. The following factors may have a positive impact on acceptance:

- The transfer pricing method proposed is in line with the arm's length principle and international transfer pricing practice for the proposed covered transaction(s) as accurately delineated;
- The proposed arrangements are not merely contemplated but are very likely to be put in place or are already in place;
- The proposed arrangements are unlikely to change significantly during the term of the APA;
- The transfer pricing issues under discussion are complex and material enough to require advance guidance;
- The planned transaction can be assessed with sufficient data and comparables;
- The taxpayer has a history of consistent compliance and the tax authorities are comfortable with the taxpayer's corporate governance and control mechanisms;
- The tax authorities have the resources and skills to assess the application;
- The arrangements to be covered by the APA are not likely to be the subject of the application of anti-avoidance rules, including anti-treaty shopping rules.

## Phase 4: Information gathering by tax authorities

### 1.28 What methods are available to collect information?

In order to work on the case, tax authorities may want to gather further information by:

- Requesting additional documents,
- Conducting functional analysis interviews,
- Having a site visit,
- Involving industry or other experts,
- Conducting their own research on the taxpayer / industry and running a data assessment e.g. based on publicly available data sources.

### 1.29 What documents can be requested during the information gathering phase?

The documents to be requested during the information gathering phase could include the following information on the taxpayer:

- a legal chart,
- an organizational chart including the identification of key decision makers,
- intra-group contracts, financial statements,
- the group Master file together with the Local files of the involved associated enterprises,
- benchmarking studies,
- industry descriptions,
- a description of the business model including key value drivers,
- a description of functions, assets and risks and role descriptions of key decision makers.

Further details on relevant information including guidance on potential questions during a transfer pricing audit can be found in the UN Compliance Toolkit. Industry specific questionnaires are provided in the annexes of the Guidance for the pharmaceutical industry and the agricultural products industry.

In general, the information requested should be relevant or foreseeably relevant as defined under domestic law for a tax audit. The information should be shared with all competent authorities involved, ideally simultaneously.

### 1.30 When is joint information gathering appropriate?

Similar to the pre-filing meeting, the fact finding is typically country specific and conducted by the respective tax authorities. However, joint questionnaire(s) and joint interviews, joint status meetings / discussions on complex questions or even joint site visits and industry studies can help to improve the APA process and avoid information asymmetry. Experience shows that asymmetric information will lead to a slower procedure and the possible failure of the agreement. Information exchange between the authorities should be conducted openly, timely and, to the greatest extent possible, shared with both competent authorities at, or around, the same time through secure communication channels.

## Phase 5: Analysis of information and preparation of position papers by the tax authorities

### 1.31 When should the analysis of the information and preparation of the position paper start?

Most authorities find it helpful to commence analysing information as soon as it becomes available as this may help to identify whether further information is needed.

Given that transfer pricing is dependent on the facts and circumstances, a competent authority should determine a taxpayer's facts and circumstances at the outset. Where there are differences of views on the relevant facts and circumstances, it may be helpful to engage in further information gathering (e.g., via joint questionnaires, site visits, industry studies, etc.) to reconcile these differences.

Once the facts and circumstances have been established and an analysis of these facts conducted, the findings of this analysis should be summarised in a position paper. There should also be a first exchange on the most appropriate transfer pricing method before the competent authorities draft their position papers.

### 1.32 What should position papers include?

Position papers outline a jurisdiction's position in relation to the covered transaction(s). Position papers are important to allow competent authorities to understand the treaty partner's position prior to discussions commencing.

Position papers should include sufficient detail to enable the treaty partner to understand the relevant issues and the reasons why a position has been taken. Typically, position papers include the following information<sup>33</sup>:

- Legal name and taxpayer identification number,
- Contact details of competent authorities including official(s) in charge,
- A short description of the taxpayer's business including functional, risk and asset analysis, (though bearing in mind the goal is not to duplicate the APA request provided by the group, but rather to summarise the information relevant to the position of the tax administration),
- A summary of financial data,
- An outline of the taxpayer's position including their selection of the transfer pricing method and its application,
- A description of the competent authority's position including their selection of the transfer pricing method, and its application,
- The relevant critical assumptions,
- The suggested term of the APA.

---

<sup>33</sup> Please see for a similar overview: OECD (2022). Bilateral Advance Pricing Arrangement Manual. Annex C.

Depending on the complexity of the case, some aspects, especially regarding the taxpayer's business and the economic analysis including details on comparables, may be more or less detailed.

## Phase 6: Negotiations and agreement between competent authorities

### 1.33 What should be the process of interaction with the taxpayer during the negotiation stage?

Taxpayers are not involved in the negotiation phase including the drafting of the position papers and discussions between competent authorities. Nevertheless, in complex cases the competent authorities may seek additional information from the taxpayer to avoid misunderstanding and errors of fact. Furthermore, it may be beneficial to provide the taxpayer with regular updates on the status of discussions. Such taxpayer involvement is at the discretion of the competent authorities. While further information may be requested from a taxpayer, there would be no taxpayer participation in the negotiations between the competent authorities.

### 1.34 What elements need to be defined as result of the negotiation?

A successful APA process usually results in an APA with the following information:

- The relevant taxpayers,
- A description and a delineation of the covered transaction(s),
- The methodology including its application, i.e., how to determine the exact pricing, as well as the remedies that would apply in the event if the agreed pricing / outcome is not met,
- The critical assumptions,
- The term of the APA,
- Compliance obligations,
- The effect on previous years / interaction with ongoing dispute resolution, if relevant.

### 1.35 What is a common term length for an APA?

Countries with limited experience in applying a transfer pricing regime may initially prefer to limit the terms of their APAs (e.g., to three years) so they can then evaluate the experience more quickly and adjust their practices as needed. A more common term to be used once some experience has been gathered would be five years. In agreeing on the term length, the time it took to negotiate the APA should also be considered.

### 1.36 How is the APA concluded between tax authorities?

As competent authorities conclude an APA, a document is signed by both parties to confirm all the details of the agreement. This document is drafted by one or the other of the authorities and revised as needed by the other to ensure mutual agreement. Once it is signed, the APA is binding on both tax authorities, provided the associated enterprises that constitute the respective taxpayers in the jurisdictions that are involved also have signed a matching agreement with

their respective tax authorities unless a critical assumption is breached (see below under acceptance and implementation for the binding effect towards taxpayers). Technically, in the case of a bilateral APA, there will be three separate agreements: one between the two competent authorities, and one agreement between each taxpayer and its tax authority covering the APA.<sup>34</sup> Multilateral APAs in most cases are a combination of several bilateral APAs.<sup>35</sup>

## Phase 7: Presentation to and acceptance of agreement by taxpayer and implementation

### 1.37 Should the taxpayer be contacted prior to the final conclusion of the APA?

Once the negotiation and agreement on the terms of the APA are concluded between the competent authorities, the taxpayer(s) must accept the terms of the agreement for the APA to take effect. Therefore, if the competent authorities agree on APA terms that differ materially from those proposed by the taxpayer, it would be helpful to advise the taxpayer of the differences. Keeping taxpayers informed, as suggested above, can help them understand and agree to the terms of the APA as agreed between the competent authorities.

### 1.38 How is the APA formally accepted and implemented?

In many countries, the APA needs to be formally accepted by the taxpayer. Once the APA is accepted by the taxpayer, it is binding for tax authorities and taxpayers alike (subject to the critical assumptions remaining valid). Some countries require a formal domestic implementation agreement between each tax authority and their taxpayer, mirroring the bilateral APA between the competent authorities. The domestic implementation agreement should accurately reflect the relevant agreed wording of the APA.

### 1.39 Should APAs be published?

APAs include confidential taxpayer information that can be competitively disadvantageous for the taxpayer involved if disclosed publicly. As such, publication of APAs is a sensitive topic. That said, there are several countries that disclose APA information and even go as far as publishing redacted/anonymized summaries of APAs. They largely do this because other taxpayers will be interested in whether APAs have been issued, whether those APAs were bilateral or unilateral, what types of transactions were covered and what methods were agreed on. Such information may help other taxpayers to gauge if they should move forward and file for an APA themselves. Similarly, other countries may want to learn whether an (unilateral) APA affecting their jurisdiction may potentially serve to erode their tax base. Furthermore, disclosure of APA data in a standardized anonymous and neutral format also may help stave off repeated requests for disclosure of APA information by the public at large to authorities under relevant administrative transparency provisions or “Freedom of Information” legislation. Responding to such requests may be time consuming and politically sensitive.

---

<sup>34</sup> In case of a unilateral APA, there is just one agreement between the taxpayer and the tax authority.

<sup>35</sup> See in detail OECD (2023). Manual on the Handling of Multilateral Mutual Agreement Procedures and Advance Pricing Arrangements. OECD Forum on Tax Administration, Paris. Available from <https://doi.org/10.1787/f0cad7f3-en>, para. 26.



Disclosure can be organized at local country level (annual statistics are published, for example, by India or the United States), but is also addressed at international semi-government organizational level. The OECD, for example, publishes annual information on Mutual Agreement Procedures between States and on what part of those MAP agreements include transfer pricing matters. These data include APAs (but also includes regular transfer pricing adjustment-related agreements). The European Union annually discloses data on MAP and APA agreements entered into between EU Member States. To that end the information disclosure format is streamlined between all the relevant States/jurisdictions. Furthermore, disclosure of APAs is a common practice in the European Union under the EU Directive for Administrative Cooperation.<sup>36</sup> Based on that Directive, there is an obligation for EU Member States to disclose to other jurisdictions that they have entered into an APA with a taxpayer and share the relevant information. Furthermore, an exchange of information regarding the existence of unilateral APAs is part of the BEPS Action 5 minimum standard. The OECD and EU disclosure does not include sensitive taxpayer information to the public at large, however. The disclosure usually regards not much more than the type of transaction involved (services, manufacturing, IP license, cost sharing, headquarter expenses, etc.) and the transfer pricing method used. Some countries have taken up the practice to disclose with other jurisdictions that are directly affected by the APA that an APA has been entered into, even if they are not a party to the APA.

In sum, disclosure or publication of APAs can be helpful to enhance trust in a country's APA program by other jurisdictions and by taxpayers. That said, the disclosure format should be considered with great care, so as to not disclose sensitive taxpayer information or put a taxpayer into a competitively disadvantageous position, which could discourage taxpayers from entering into APAs.

## Phase 8: Post implementation and annual compliance monitoring

### 1.40 How should a concluded APA be monitored?

Ongoing monitoring is needed to ensure that the critical assumptions that underpin the APA terms remain valid, and that the taxpayer is applying the APA terms in good faith. A best practice is to require the taxpayer to file an annual compliance report to their respective tax authority, setting out how the APA terms have been applied, and to confirm that the critical assumptions remain valid. The report might be submitted together with the tax return, or through alternative channels. Other countries require disclosure in the tax return that the return is filed subject to an APA.

### 1.41 What should be part of the compliance report?

General guidance on the requirements for compliance reports may be specified in additional administrative APA guidance. In every case, taxpayers and tax authorities should agree what information should be part of the compliance report including specific information, detailed

---

<sup>36</sup> Council Directive (EU) 2015/2376 (DAC3).

calculations required to implement the APA terms (including the agreed transfer pricing method), financial statements, and other relevant documents (together with translations if required). That is, the compliance report should generally require information needed to verify the compliance with the APA terms and should be considered together with information already provided by the taxpayer in the APA application process. The specific requirements are often set out in the APA terms.

#### 1.42 What needs to be done in case a taxpayer is in breach of a critical assumption specified in the APA?

Critical assumptions set out those conditions that underpin the APA terms and that are assumed to apply in order to ensure that the APA leads to an arm's length result. If a critical assumption is breached, the APA may no longer be valid. The APA itself may set out available remedies in the event of a breach of critical assumption. Alternatively (or in addition), general guidance on available remedies may be provided in administrative APA guidance. Tax authorities and competent authorities may seek to discuss the impact of the breach with their taxpayers, and with each other, to determine if the APA terms are likely to still be capable of providing an arm's length result for the covered transactions. See the Guidance on Transfer Pricing and COVID-19 by the UN Tax Committee for examples of how to deal with APAs under extraordinary circumstances.

#### 1.43 When and how should an APA be renegotiated / renewed?

As outlined, an APA term of five future years in many cases strikes the best balance between efficient use of resources and the uncertainties associated with prospective agreements. The risks associated with uncertainties can be minimized by specifying critical assumptions, based on which the APA will be renegotiated if necessary.

A renewal should be applied for before the end of the APA term and, in any case, before the end of the first fiscal year to which the renewal is supposed to apply.

Renewal processes are often much faster than the initial APA process. Depending on the case, and especially in case of no material changes in the facts and circumstances or relevant economic conditions, renewals may be possible without substantive discussions with the treaty partner. In that case, a written procedure or a videoconference may be utilised for a quicker process.

## Appendix 1: APA fees worldwide

The data mostly stems from the jurisdictions' MAP profiles published with the OECD<sup>37</sup> as of 4 January 2024.

<b>Jurisdiction</b>	<b>Fee</b>
Albania	1,200,000 ALL (about 12,000 USD)
Argentina	-
Australia	No
Austria	No
Azerbaijan	No
Belgium	No
Botswana	No
Canada	No
Chile	No
China (People's Republic)	No
Colombia	No
Croatia	Yes, depending on revenue
Czech Republic	10,000 CZK (about 450 USD)
Denmark	No
Dominican Republic	No
Estonia	No
Finland	No
France	No
Gabon	No
Germany	Transfer pricing cases: EUR 30,000 <sup>38</sup> (15,000 for prolongation); Smaller transactions: EUR 10,000 (7,500 for prolongation); Other cases: EUR 7,500 (3,750 for prolongation)
Greece	1,000 EUR for the informal application 5,000 EUR for the formal application 10,000 EUR to process contacts with each of the tax authorities involved
Hong Kong (China)	Direct costs: 1,730-2,650 HKD/h depending on the officials' seniority, capped at a total amount of 500,000 HKD (about 64,000 USD)
Hungary	Filing fee for unilateral APAs: 2,000,000 HUF (5,800 USD) Bilateral APAs: 4,000,000 HUF (11,500 USD) Multilateral APAs: 2,000,000 HUF (5,800 USD) multiplied by the number of competent authorities involved
India	Depending on the value of the transaction 1 Mio. Rs. (12,000 USD) to 2 Mio. Rs (24,000 USD); 500,000 Rs. (6,000 USD) for rollback requests
Indonesia	No
Ireland	No
Israel	No
Italy	Yes
Jamaica	10,000 JMD (65 USD)

<sup>37</sup> <https://www.oecd.org/tax/dispute/country-map-profiles.htm>.

<sup>38</sup> The FX-rate for EUR-USD is around parity (early 2024, 1.10 USD / EUR)

Japan	No
Kazakhstan	No
Korea	No
Latvia	7,114 EUR
Lithuania	No
Luxembourg	10,000 EUR
Malaysia	Only officials' travel expenses
Malta	No
Mexico	297,399.15 MXN (17,450 USD); annual review 59,479.83 MXN (3,500 USD)
Morocco	No
The Netherlands	No
New Zealand	Only officials' travel expenses
Norway	No
Poland	1 % of transaction value; at least 50,000 PLN (12,600 USD) and no more than 200,000 PLN (50,400 USD) When participating in Cooperative Compliance Programme 50 %; Renewal 50 % of application fee
Portugal	Depending on transaction, at least 632,000 PTE (3,500 USD) and no more than 7,000,000 PTE (38,000 USD)
Qatar	No
Romania	Large Taxpayers or transaction value > 4 Mio. EUR: 20,000 EUR for issuing an APA and 15,000 EUR for modifying it SMEs: 10,000 Euro for issuing an APA and 6,000 Euro for modifying it
Singapore	No
Slovak Republic	30,000 EUR
Slovenia	Generally: 15,000 EUR Extension of the application: 7,500 EUR In case of non-conclusion of an APA for reasons not due to the taxpayer refund of 5,000 EUR
Spain	No
Sweden	New application 150,000 SEK (14,670 USD) per country, renewal with no changes 100,000 SEK (9,800 USD) per country and renewal with changes 125,000 SEK (12,200 USD) per country
Switzerland	No
Taiwan (China)	No
Thailand	No
Türkiye	No
Ukraine	No
United Kingdom	No
United States	60,000 USD; renewal 35,000 USD Small cases: 30,000 USD, 12,500 for amendments of existing APAs
Uruguay	No
Viet Nam	No

## Appendix 2: Key elements of APA guidance

The content of APA guidance depends on whether the State's legal system provides for a provision on APAs in the national law. If this is not the case, APA guidance might include:

- A description of the aim and scope of the APA program
- Details regarding the procedure for an APA, namely
  - the main features of the procedure
  - an explanation of the competent authority
  - details regarding the pre-filing process
  - information regarding fees (if any)
  - where and how to formally apply
  - how and in which timeframe the admissibility of the application is assessed
  - what the actions of the competent authority in case of an admissible application are
  - when and how taxpayers are involved during the negotiation and in the context of an agreement
- What follows after an APA is concluded, such as
  - how it is implemented
  - what the consequences for taxpayers and tax authorities are (especially in the context of an audit)
  - in which way and to whom taxpayers have to report regarding their compliance with the APA's terms
  - what happens if the terms of an APA are not adhered to
  - whether and how an APA can be renewed.

Please also refer to the existing guidance of the following countries as examples:

- **India:** [https://www.indianembassyusa.gov.in/pdf/advance\\_pricing\\_agreement\\_guidance\\_with\\_faqs\\_\(tpi-43\).pdf](https://www.indianembassyusa.gov.in/pdf/advance_pricing_agreement_guidance_with_faqs_(tpi-43).pdf)
- **Ireland:** <https://revenue.ie/en/tax-professionals/tadm/income-tax-capital-gains-tax-corporation-tax/part-35/35-02-07.pdf>
- **Malaysia:** <https://www.hasil.gov.my/media/s24cwteh/malaysian-apa-guidelines-2024.pdf>
- **Singapore:** [https://www.iras.gov.sg/media/docs/default-source/e-tax/etaxguide\\_cit\\_transfer-pricing-guidelines\\_7th.pdf?sfvrsn=26bfb1a6\\_18](https://www.iras.gov.sg/media/docs/default-source/e-tax/etaxguide_cit_transfer-pricing-guidelines_7th.pdf?sfvrsn=26bfb1a6_18) (Sections 10, 12)
- **Hong Kong:** <https://www.ird.gov.hk/eng/pdf/dipn48.pdf>
- **UK:** <https://www.gov.uk/hmrc-internal-manuals/international-manual/intm480000>
- **USA:** <https://www.irs.gov/pub/foia/ig/lmsb/lbi-04-0423-0006.pdf>; s. auch <https://www.irs.gov/pub/irs-drop/rp-15-41.pdf>; <https://www.irs.gov/businesses/corporations/apma>

### Appendix 3: List of references for further information

- OECD (2022). Bilateral Advance Pricing Arrangement Manual. Forum on Tax Administration Paris. Available from [https://www.oecd.org/content/dam/oecd/en/publications/reports/2022/09/bilateral-advance-pricing-arrangement-manual\\_95a24b53/4aa570e1-en.pdf](https://www.oecd.org/content/dam/oecd/en/publications/reports/2022/09/bilateral-advance-pricing-arrangement-manual_95a24b53/4aa570e1-en.pdf).
- Markham, M. (2012). Advance Pricing Agreements: Past, Present and Future, Wolters Kluwer.
- Levey, M. & Wrappe, S. (2020). Transfer Pricing: Rules, Compliance and Controversy, Wolters Kluwer.
- Sharma, S. (2019). Advance Pricing Agreement – Indian Experience. Asia-Pacific Tax Bulletin, 25(6). Available from <https://doi.org/10.59403/2fbe640>.
- Sharma, K. (2021). Evolution of APA Regime. Wolters Kluwer.
- Heimert, M. & Michaelson, TJ (2018). Guide to International Transfer Pricing. Wolters Kluwer.
- Lang, M., Cottani, G., Petruzzi, R. & Storck, A. (2019). Fundamentals of Transfer Pricing. Wolters Kluwer. Chapter 5.2.
- Baistrocchi, E. & Roxan, I. (2014). Resolving Transfer Pricing Disputes. Cambridge University Press.