



APA & MAP Country Guide 2019 – Austria

CONNECTING THE DOTS OF INTERNATIONAL TAX CONTROVERSY



Austria

APA Program

KEY FEATURES	
Competent authority	Ministry of Finance for bilateral and multilateral APAs; and the Taxpayer's local tax office for unilateral APAs (Competent authority).
Relevant provisions	For bilateral and multilateral APAs, the respective Article of the applicable DTT that implements article 25 of the OECD Model Tax Convention on Income and on Capital and the UN Model Double Taxation Convention; and guidance published by the Ministry's information on MAP. For unilateral APAs, section 118 of the Federal Fiscal Code; and decree of the Ministry of Finance BMF-010103/0035-VI/2011.
Types of APAs available	Unilateral, bilateral, and multilateral APAs are available.
Acceptance criteria	For all APAs a formal (written) and timely request to the Competent authority either by the Taxpayer or an authorized representative is required. For bilateral and multilateral APAs the Taxpayer must be eligible under the relevant DTT (treaty protected). For unilateral APAs the issue has to be clearly defined as a transfer pricing question (whereas questions on the existence of a PE would be rejected) and are only foreseen for cases of high fiscal relevance. Fiscal relevance however, has not been expressly defined.

Key timing requests, deadlines	<p>For unilateral APAs the request has to be filed before the covered transactions took place. For bilateral and multilateral APAs, requests have to be filed typically three years after the first notification of the taxation contrary to the DTT; however, specific provisions in DTTs might include deviations. Considering the specific character of APAs usually those timelines will not be relevant.</p>
APA term limits	<p>There is no maximum term for bilateral or multilateral APAs; however in practice most APAs are effective for three to five years.</p>
Filing fee	<p>For unilateral APAs, filing fees are between EUR1,500-EUR20,000 (approx. USD1,700-USD22,700) depending on the sales revenues of the Taxpayer for unilateral APAs:</p> <p>up to EUR400,000 (approx. USD455,000): EUR1,500 (approx. USD1,700);</p> <p>EUR400,001-700,000 (approx. USD454,000-910,000): EUR3,000 (approx. USD3,400);</p> <p>EUR700,001-10,000,000 (approx. USD800,001-11.35 million): EUR5,000 (approx. USD5,700);</p> <p>EUR10,000,001-40,000,000 (approx. USD11.35m-45.5m): EUR10,000 (approx. USD11,35200); and</p> <p>from EUR40,000,001: EUR20,000 (approx. USD22,700)</p> <p>There is no filing fee for bilateral or multilateral APAs.</p>
Rollback availability	<p>A rollback is only available for bilateral and multilateral APAs in line with Chapter IV of the OECD Transfer Pricing Guidelines and the BEPS Action 14 Minimum Standard.</p>
Collateral issues	<p>No specific guidance.</p>

PRE-FILING REQUIREMENTS

Overview	<p>A pre-filing procedure is usually held for all types of APAs, although this is not specifically regulated. Typically, a Taxpayer will explain the corner stones of the request to all tax authorities during that procedure, including a description of the value chain, the covered transactions, and the applied TP method.</p>
Anonymous pre-filing availability	<p>No specific guidance.</p>

APPLICATION REQUIREMENTS

Content of application	<p>For unilateral APAs the Taxpayer must provide the following written documentation:</p> <ul style="list-style-type: none"> the facts on which the fiscal assessment is based; a description of the legal issues; the fiscal relevance of the question; the Taxpayer's legal assessment; and the information relevant to the amount of the administrative contribution. <p>There is no specific guidance for bilateral or multilateral APAs.</p>
Language	<p>Documentation should generally be submitted in German; however, English documentation will usually be accepted.</p>
SME provisions	<p>No specific guidance.</p>

OTHER PROCEDURAL CONSIDERATIONS

General	The Tax authorities follow a standard application and monitoring process. There are no unique procedural aspects.
Monitoring & compliance	The Competent authority may require specific monitoring and compliance processes at their discretion. In practice the Competent authority often includes the requirement of annual reporting in unilateral as well as bilateral and multilateral APAs.
Renewal procedure	No specific guidance.

MAP Program

KEY FEATURES	
Competent authority	The Ministry of Finance (Competent authority)
Relevant provisions	Information of the Ministry of Finance on Mutual agreement and arbitration procedures
Acceptance criteria	<p>The Taxpayer must be eligible under one of Austria's DTTs, or the EU Arbitration Convention (90/436/EEC) to request a MAP. There must be a formal (written) and timely request to the Competent authority including a description of the facts and a legal assessment. The request has to be submitted by the Taxpayer or an authorized representative. Cases resulting from bona fide Taxpayer initiated adjustments are accepted for the MAP program.</p>
Key timing requests, deadlines	<p>Most of Austria's DTTs permit Taxpayers to present a case within three years from the first notification to the Taxpayer of the actions giving rise to taxation not in accordance with the DTT. However, time limits may vary, and the relevant DTT should be consulted for the applicable time limit. The Competent authority is committed to solving MAP cases under DTTs within an average time of 24 months in line with the BEPS Action 14 minimum standard. For cases under the EU Arbitration Convention, respective timeframes will also need to be considered, including guidance in the 2009 Revised Code of Conduct. Article 7/1 of the EU Arbitration Convention foresees a two year period for concluding the MAP phase. Article 4 of the EU Dispute Resolution Directive also foresees a two-year timeframe for the MAP.</p>

APPLICATION REQUIREMENTS

Content of application	<p>The MAP request must include the following:</p> <ul style="list-style-type: none"> • name and address of the Taxpayer; • tax Identification Number and competent (local) tax office; • description of facts and circumstances; • the Taxpayer's legal assessment of the issue; • taxation period; • information on other legal remedies; and • other suitable documentation (e.g. audit reports).
Language	No specific guidance.

OTHER PROCEDURAL CONSIDERATIONS

Interaction with domestic proceedings	<p>Taxpayers may pursue Austrian domestic legal proceedings separately from MAP; however, Austrian legal proceedings may be suspended until the MAP has been finalized. Audit settlements do not hinder MAP, nevertheless Taxpayers can waive their rights to remedies including MAP after an audit.</p> <p>It is not specifically regulated whether MAP is open in cases of application of anti-avoidance rules (domestic or treaty). That being said, it has been observed in practice that the Competent authority was reluctant in opening cases under such circumstances. It is not specifically addressed in the legislation whether tax authorities are bound by court decisions in MAP. In practice at least a directive effect of court rulings on the competent authority has been observed. Suspension of tax collection for the duration of MAP is available on request according to domestic procedural law.</p>
--	---

<p>Arbitration</p>	<p>Generally, it is Austria's policy to include arbitration clauses in its DTTs. However, only a limited number of Austrian DTTs at present actually include an arbitration clause. Furthermore, as Austria is a member of the EU, Taxpayers may initiate the arbitration procedure under the Tax Dispute Resolution Mechanism Directive on October 10, 2017. The Directive is applicable to matters submitted after July 1, 2019, on issues related to the tax year starting on or after January 1, 2018. And, the EU Arbitration Convention also imposes a binding obligation on EU member states to eliminate double taxation under DTTs including, if necessary, by reference to the opinion of an independent advisory body.</p>
---------------------------	---

STATISTICS

<p>APA</p>	<p>Austria does not make publicly available statistics on APAs. However, respective data is submitted to the Joint Transfer Pricing Forum according to the respective requirements.</p>
<p>MAP</p>	<p>Austria had a total of 255 active MAP applications as of December 31, 2017. The average time needed to close MAP cases is 41.5 wmonths for transfer pricing cases, and 43 months for other cases.</p>

Double Taxation Treaty Network

The following treaties include MAP provisions which are the basis for bilateral and multilateral APA negotiations:

Albania	Cyprus	Italy	Morocco	Spain
Algeria	Czech Republic	Japan	Nepal	Sweden
Armenia	Denmark	Kazakhstan	Netherlands	Switzerland
Azerbaijan ^(I)	Egypt	Korea	New Zealand	Syria
Australia	Estonia	(Republic of)	Norway	Taipei ^(III)
Bahrain	Faroe Islands	Kuwait	Pakistan	Tajikistan ^(II)
Barbados	Finland	Kyrgyzstan	Philippines	Thailand
Belarus	France	Latvia	Poland	Tunisia
Belgium	Georgia	Libya	Portugal ^(VI)	Turkey
Belize	Germany ^{(I), (IV)}	Liechtenstein	Qatar ^(IV)	Turkmenistan ^(II)
Bosnia	Greece	Lithuania	Romania	Ukraine
Herzegovina ^(I)	Hong Kong	Luxembourg	Russia	United Arab
Brazil	Hungary	Macedonia ^(I)	San Marino	Emirates
Bulgaria	Iceland	Malaysia	Saudi Arabia	United
Canada	India	Malta	Serbia	Kingdom
Chile	Indonesia	Mexico	Singapore	United States
China	Iran	Moldova	Slovakia	Uzbekistan
Croatia	Ireland	Mongolia	Slovenia	Venezuela
Cuba	Israel	Montenegro ^(IV)	South Africa	Vietnam

NOTES

- I denotes treaties with MAP arbitration provisions.
- II denotes treaties with the USSR that remain applicable until a separate tax treaty is concluded.
- III denotes treaties between the countries' representative office in Taipei and the Taipei Economic and Cultural Office in the relevant country.
- IV denotes treaties that became effective within the last five years.
- V denotes treaties that are awaiting ratification.
- VI denotes MAP provisions identical to para 3, art 25 of the OECD Model Convention with respect to Taxes on Income and on Capital.
- VII arbitration is to be conducted under the statutes of the ECJ.
- VIII arbitration is to be conducted under the statutes of the ICJ.

DLA Piper is a global law firm operating through various separate and distinct legal entities. Further details of these entities can be found at www.dlapiper.com. This publication is intended as a general overview and discussion of the subjects dealt with, and does not create a lawyer-client relationship. It is not intended to be, and should not be used as, a substitute for taking legal advice in any specific situation. DLA Piper will accept no responsibility for any actions taken or not taken on the basis of this publication. This may qualify as "Lawyer Advertising" requiring notice in some jurisdictions. Prior results do not guarantee a similar outcome.

Copyright © 2019 DLA Piper. All rights reserved. | APR19 | A00091