



APA & MAP Country Guide 2019 – France

CONNECTING THE DOTS OF INTERNATIONAL TAX CONTROVERSY



France

APA Program

KEY FEATURES	
Competent authority	Direction Générale des Finances Publiques (Tax authority)
Relevant provisions	Article L.80 B 7° of the French Tax Procedure Code; and Administrative guidelines BOI-SJ-RES-20-10-20180718.
Types of APAs available	Unilateral, bilateral, and multilateral APAs are available.
Acceptance criteria	<p>Bilateral APAs may only be concluded with jurisdictions signatory to a DTT with France containing the MAP provisions. Unilateral APAs may be available where:</p> <ul style="list-style-type: none"> • the relevant DTT does not provide for a MAP and bilateral APAs are accordingly not possible; • the transactions involve a significant number of countries; • for simple but frequent issues; and • for SMEs.
Key timing requests, deadlines	The APA procedure must be initiated by the Taxpayer at least six months before the beginning of the first financial year it is anticipated to cover.
APA term limits	There is a five-year maximum term for an APA and a minimum of three years.
Filing fee	There is no filing fee.

Rollback availability	APAs are available for future years only and no rollback is available.
Collateral issues	Ongoing tax audits will not prevent the Taxpayer from initiating an APA for future financial years. An APA request will also not suspend any ongoing audits. If the Taxpayer and the Tax authority have reached a compromise in respect of a tax audit, or if after litigation a position has been taken by the courts, the Taxpayer may attempt to extend the corresponding solutions to future financial years through an APA.

PRE-FILING REQUIREMENTS

Overview	<p>Prior to a formal APA application, there should be an informal meeting with the Tax authority to discuss:</p> <ul style="list-style-type: none"> • the appropriateness of an APA in the circumstances; • the type of information required in the application; • the timeline of the application procedure; and • any other questions relating to the application.
Anonymous pre-filing availability	No specific guidance.

APPLICATION REQUIREMENTS

<p>Content of application</p>	<p>Working meetings will take place during which the Taxpayer should present supporting documentation, including:</p> <ul style="list-style-type: none"> • comparables justifying the proposed TP method; • the structure of the group to which the Taxpayer belongs; • a description of the operations performed within the group; • financial and tax data relating to the three last years and any other document justifying the proposed TP method; and • APAs obtained from other foreign tax authorities. <p>The Taxpayer may not refuse to provide information requested on the grounds that it is confidential.</p>
<p>Language</p>	<p>The documentation should be submitted in French, unless otherwise agreed with the Tax authority during informal meetings.</p>
<p>SME provisions</p>	<p>A simplified APA procedure is available for Taxpayers that meet the following criteria:</p> <ul style="list-style-type: none"> • less than 250 employees and a turnover of less than EUR50 million (approx. USD56.5 million), or total assets worth less than EUR43 million (approx. USD48.6 million); and • 25 percent or more of the capital or voting rights is not held by one or more companies that do not meet the first condition. <p>These thresholds relate to the financial year preceding the one in which the APA is requested.</p>

OTHER PROCEDURAL CONSIDERATIONS

General	The Tax authority follows a standard pre-filing, application and monitoring process. There are no unique procedural aspects.
Monitoring & compliance	The Taxpayer must lodge an annual report providing evidence of the proper application of the APA.
Renewal procedure	Applications for the renewal of APAs are required to be lodged at least six months before expiry. Negotiations on the renewal of an APA may be less onerous if there are no major changes to the terms of the existing APA.

MAP Program

KEY FEATURES	
Competent authority	Direction Générale des Finances Publiques (Tax authority)
Relevant provisions	BOI-INT-DG-20-30-20120912: Common provisions - Conventional law - Mutual proceedings for the elimination of double taxation
Acceptance criteria	Taxpayers may request a MAP if taxation has or is likely to occur that is not in accordance with the provisions of a DTT to which France is signatory.
Key timing requests, deadlines	Most of France's DTTs permit a Taxpayer to present their case to the Tax authority 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. Moreover, Taxpayers have three years to present a case to the Tax Authority under the EU Arbitration Convention (90/436/EEC).

APPLICATION REQUIREMENTS	
General	<p>Taxpayers are required to submit a request for MAP, which includes the following:</p> <ul style="list-style-type: none"> • identification of the Taxpayer and of the related party; • detailed information regarding the facts creating a situation of double taxation; • identification of relevant taxes and tax years or financial years; • a copy of the notice of reassessment; • detailed information regarding any litigation launched by the taxpayer; and • the commitment of the Taxpayer to answer to reasonable queries of the Tax authority.

Language	No specific guidance.
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OTHER PROCEDURAL CONSIDERATIONS

Interaction with domestic proceedings	<p>Taxpayers may simultaneously request a MAP and initiate domestic litigation proceedings; however, if through the MAP a solution is reached, the solution can only be implemented if litigation is abandoned.</p>
Arbitration	<p>As France is a member of the EU, Taxpayers may initiate the arbitration procedure under the Tax Dispute Resolution Mechanism Directive of October 10, 2017, transposed by the French Finance Act for 2019 dated December 28, 2018, in articles L. 251 B and following of the Tax Procedure Code (a decree should follow).</p> <p>The implementation of the MLI could modify the DTT currently in force.</p>
APA	<p>There were 22 APA application requests in 2017 and 12 completed applications. The average time of completion of the APA negotiations is around 27 months.</p>
MAP	<p>France had a total of 882 active MAP applications as of December 31, 2017. The average time needed to close MAP cases is 50 months for transfer pricing cases, and 38 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	Czech Republic	Kenya
Algeria	Ecuador	Korea (Republic of)
Andorra ^(iv)	Egypt	Kosovo
Argentina	Estonia	Kuwait
Armenia	Ethiopia	Latvia
Australia	Finland	Lebanon
Austria	French Polynesia	Libya
Azerbaijan	Gabon	Lithuania
Bahrain	Georgia	Luxembourg
Bangladesh	Germany ⁽ⁱ⁾	Macedonia
Belarus	Ghana	Madagascar
Belgium	Greece	Malawi
Benin	Guinea	Malaysia
Bolivia	Hong Kong	Mali
Bosnia	Hungary	Malta
Botswana	Iceland	Mauritania
Brazil	India	Mauritius
Bulgaria	Indonesia	Mexico
Burkina Faso	Iran	Monaco
Cameroon	Ireland	Mongolia
Canada ⁽ⁱ⁾	Israel	Montenegro
Central African Republic	Italy	Morocco
Chile	Ivory Coast	Namibia
China (People's Republic) ^(iv)	Jamaica	Netherlands
Congo	Japan	New Caledonia
Croatia	Jordan	New Zealand
Cyprus	Kazakhstan	Niger

Nigeria	Singapore	Ukraine
Norway	Slovakia	United Arab Emirates
Oman	Slovenia	United Kingdom ^(I)
Pakistan	South Africa	United States ^(I)
Panama	Spain	Uzbekistan
Philippines	Sri Lanka	Venezuela
Poland	Sweden	Vietnam
Portugal	Switzerland ^(I)	Zambia
Qatar	Syria	Zimbabwe
Romania	Thailand	
Russia	Trinidad & Tobago	
Saudi Arabia	Tunisia	
Senegal	Turkey	
Serbia	Turkmenistan	

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.

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