



APA & MAP Country Guide 2019 – Hungary

CONNECTING THE DOTS OF INTERNATIONAL TAX CONTROVERSY



Hungary

APA Program

KEY FEATURES	
Competent authority	Hungarian Tax Authority (National Tax and Customs Administration) (HTA)
Relevant provisions	<p>Section 174-183 of the Act CL of 2017 on the Rules of Taxation;</p> <p>Section 16 of the Act CLI of 2017 on the Procedural Regulations of the Tax Administration;</p> <p>Section 36 of the Act CL of 2016 on the General Procedural Regulations of the Public Administration;</p> <p>Section 111-116 of the Decree of the Government 465/2017. (XII. 28.) on the Procedural Regulations of the Tax Administration; and</p> <p>Decree of the Ministry of National Economy 32/2017. (X. 18.) on Transfer pricing documentation requirements.</p>
Types of APAs available	Unilateral, bilateral and multilateral APAs are available.
Acceptance criteria	Bilateral and multilateral APAs may only be concluded with jurisdictions signatory to DTTs with Hungary. In the absence of DTTs, the HTA can issue only a unilateral APA if the information available to the HTA is sufficient for the purposes of establishing the arm's length price.
Outcome	HTA may confirm by an APA resolution the facts, circumstances and the applicable method for establishing the arm's length price and, if possible, the arm's length price (or arm's length price range). There is no appeal against the decision of the HTA made in the course of an APA procedure.

Key timing requests, deadlines	<p>The starting date of the effect of the APA resolution should be established based on the application. It may not be earlier than the date of submission of the application nor later than the date when the resolution becomes final. In bilateral or multilateral APA procedures, the resolution may also have a retroactive effect for the period before the submission of the application provided that this period:</p> <ul style="list-style-type: none">• is not closed by a tax audit;• has not been expired; and• is not a period pertaining to a tax audit that is in progress. <p>APA requests must be submitted either before the conclusion of the relevant transaction(s) or after the conclusion of transaction(s) that are performed continuously at the time or after the submission of the APA request proposed to be covered under the APA, provided that the relevant transaction(s) are performed for a minimum term of six months; and</p> <ul style="list-style-type: none">• at least one performance takes place every other month; or• one of the parties maintain specific credit facilities available in favor of the other party during the contract; or• there is a requirement for the continuous availability of either of the parties participating in the transaction(s).
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	<p>The HTA may request the Taxpayer to provide additional information that is necessary for assessing the APA request, or for clarifying new facts, data or circumstances that may emerge in the course of the procedure. The HTA must issue an APA within 120 days after the submission of the request. This period can be extended twice, each time for a further 60 days. The periods provided for information or document supplementation, test production, communication with any relevant foreign tax authority and the verification of information with such authority and performance of validity audit by the HTA are not included in the above period. If such new facts or circumstances that influence the establishment of the arm's length price are identified in the course of the above procedures, the 120-day period for judging the APA request starts all over again.</p>
<p>APA term limits</p>	<p>The APA is valid for a period of three to five years. Upon request, this period can be extended once for three years.</p>
<p>Filing fee</p>	<p>Depending on the number of jurisdictions taking part in the APA, filing fees vary as follows:</p> <p>Unilateral APAs HUF2,000,000 (approx. USD7,140)</p> <p>Bilateral APAs HUF4,000,000 (approx. USD14,280)</p> <p>Multilateral APAs HUF2,000,000 (approx. USD7,140) per participant jurisdiction</p> <p>In the case of proceedings for APA extension or modification, the fee is 50 percent of the fee paid in the original procedure. If the APA request is rejected or withdrawn, the HTA returns 85 percent of the fee already paid pertaining to the APA procedure.</p>
<p>Rollback availability</p>	<p>There is no rollback availability.</p>
<p>Collateral issues</p>	<p>No specific guidance.</p>

PRE-FILING REQUIREMENTS

Overview	<p>The Taxpayer may request a pre-filing meeting with the HTA to discuss the conditions under which to conduct proceedings, negotiate a timetable for completion and the documentation necessary for filing the APA request within the framework of a pre-filing consultation initiated electronically by the Taxpayer prior to the submission of the APA request. The electronic request form to be used for initiating a pre-filing consultation is the Form 19APIAC (available on the HTA's website). The Taxpayer should present a summary of the transaction subject to the APA request, together with the underlying facts and pricing method to be applied. Both the Taxpayer and the HTA may initiate consultation in an APA procedure. The result of the pre-filing consultation and any conclusion reached therein are not legally binding.</p>
Anonymous pre-filing availability	<p>Anonymous pre-filing is not available.</p>
Pre-filing consultation fee	<p>The pre-filing consultation is subject to an administrative fee. The fee for a pre-filing consultation is HUF500,000 (approx. USD1,780) per each consultation.</p>

APPLICATION REQUIREMENTS

Content of application

The APA request must be submitted electronically to the Central Management of the HTA (NAV Központi Irányítás) and the Taxpayer must be represented by a lawyer, legal advisor, tax advisor, tax expert or auditor. The APA request may cover a single, or multiple transactions if they can be documented together based on the transfer pricing documentation provisions prescribed by Decree of the Ministry of National Economy 32/2017. (X. 18.).

The APA request must contain the following:

- identification and contact information of the Taxpayer and its representative;
- APA request **Form 19APIAC** (available on the HTA's website);
- Master File and Local File in compliance with Decree 32/2017 (X. 18.) of the Minister for the National Economy;
- the relevant time period to be covered under the binding force of the APA;
- declaration on whether the request is for a unilateral, bilateral or multilateral APA;
- accredited English translation of the APA request and its appendices in case of bilateral or multilateral APA request;
- the bank account details into which the filing fee can be refunded in the event that the APA request is refused;
- name, seat and identification number of the ultimate parent company of the Taxpayer;

(cont.)	<ul style="list-style-type: none"> • related parties resident in Hungary and data of the related parties concerned with the APA procedure resident in Hungary or in a foreign country (incl. their names, addresses, seats, branches, tax numbers or equivalent identification numbers, and data of the ultimate and direct parent company of the Taxpayer); • declaration on the accuracy of the facts included in the APA request; • signed authorization for the Taxpayer's representative; • proxy for the tax advisor, tax expert or lawyer for submission of the APA request and subsequent representation; and • notarized (and apostilled if required) company registry excerpt of the Taxpayer (this must not be older than 30 days).
Language	The documentation can be submitted in Hungarian, French, German or English.
SME provisions	APAs are not available to Taxpayers exempt from the obligation to prepare a transfer pricing report covering their inter-company transactions. Taxpayers owned directly or indirectly by the Hungarian state may submit an APA request regardless that they are not required to document their inter-company transactions for transfer pricing purposes.

OTHER PROCEDURAL CONSIDERATIONS

General	The HTA follows a standard electronic pre-filing, application and monitoring process throughout the APA procedure. There are no unique procedural aspects.
Monitoring & compliance	There is no monitoring of compliance with APAs after the issuance of the corresponding resolution, or post-agreement annual filing procedures.
Renewal procedure	Applications for the renewal of APAs are required to be lodged six months before expiry.

MAP Program

KEY FEATURES	
Competent authority	Hungarian Tax Authority (National Tax and Customs Administration) (HTA)
Relevant provisions	Section 42 of the Act XXXVII of 2013 on detailed regulation of the MAP covering taxes and dues; and Article 6-14 of Section 3 of Chapter II of Convention on the elimination of double taxation in connection with the adjustment of profits of associated enterprises (90/463/EEC) (EU Arbitration Convention).
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 Hungary is signatory.
Key timing requests, deadlines	Most of Hungary's DTTs permit Taxpayers to present a case to the HTA within three years from the first notification to the Taxpayer under the EU Arbitration Convention. However, time limits may vary and the relevant DTT should be reviewed for the applicable time limit. If the HTA finds the information or documents presented in the application insufficient to judge the case, the HTA may issue an information supplement request within two months from receiving the application.

APPLICATION REQUIREMENTS

<p>Content of application</p>	<ul style="list-style-type: none"> • No specific form is required but the application should include at least the following: • identification of the Taxpayer and any other persons related to the case; • relevant facts of the underlying tax case; • information in relation to any public administrative or civil procedures initiated by the applicant or the other concerned persons regarding the tax case; and • reason for the application.
<p>Language</p>	<p>No specific guidance.</p>

OTHER PROCEDURAL CONSIDERATIONS

<p>Interaction with domestic proceedings</p>	<p>No specific guidance.</p>
<p>Arbitration</p>	<p>As Hungary is a member of the EU, Taxpayers may initiate the arbitration procedure under the Tax Dispute Resolution Mechanism Directive of 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.</p> <p>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	
APA	There were 24 APA application requests in 2015 and 11 completed applications. The HTA has had an APA program since 2007.
MAP	Hungary had a total of 16 active MAP applications as of December 31, 2017. The average time needed to close MAP cases is 18.5 months for transfer pricing cases, and 28.5 months for other cases.

Double Taxation Treaty Network

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

Albania	Estonia	Kuwait
Armenia	Finland	Latvia
Australia	France	Liechtenstein ^(IV)
Austria	Georgia	Lithuania
Azerbaijan	Germany	Luxembourg
Bahrain	Greece	Macedonia
Belarus	Hong Kong	Malaysia
Belgium	Iceland	Malta
Bosnia and Herzegovina	India	Mexico
Brazil	Indonesia	Moldova
Bulgaria	Iran	Mongolia
Canada	Ireland	Montenegro
China (People's Rep.)	Israel	Morocco
Croatia	Italy	Netherlands
Cyprus	Japan	Norway
Czech Republic	Kazakhstan	Oman
Denmark	Korea (Rep.)	Pakistan
Egypt	Kosovo	Philippines

Poland	Slovak Republic	Turkey
Portugal	Slovenia	Turkmenistan
Qatar	South Africa	Ukraine
Romania	Spain	United Arab Emirates ^(IV)
Russia	Sweden	United Kingdom
San Marino	Switzerland	United States
Saudi Arabia ^(IV)	Taipei ^(III)	Uruguay
Serbia	Thailand	Uzbekistan
Singapore	Tunisia	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.

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