



APA & MAP Country Guide 2019 – Ireland

CONNECTING THE DOTS OF INTERNATIONAL TAX CONTROVERSY



Ireland

APA Program

KEY FEATURES	
Competent authority	Transfer Pricing Branch of the Revenue (Revenue)
Relevant provisions	Bilateral Advance Pricing Agreement Guidelines 2016, available on the Revenue's website.
Types of APAs available	Bilateral and multilateral APAs are available.
Acceptance criteria	<p>Taxpayers in Ireland and PEs in Ireland of non-resident Taxpayers located in jurisdictions with which Ireland has an effective DTT are eligible to apply for an APA. APAs may be sought for transfer pricing issues, including the attribution of profits to a PE.</p> <p>Factors which are more likely to result in a request for an APA being accepted include:</p> <ul style="list-style-type: none"> • significant doubt over the TP method; • a high likelihood of double taxation arising if no APA is in place; • the Taxpayer is applying a bespoke TP method; • the application of the TP method is complex and/or requires complex calculations; • reliable comparables are not readily available and/or significant and complex adjustments are required; and • the transactions which are to be covered by the APA have already been entered into or are about to be entered into and are not expected to change throughout the APA period.

(cont.)	If a Taxpayer is involved in a case with the Tax Appeals Commission or in court proceedings in respect of a matter which is related to the transactions covered by the proposed APA, the APA application may be rejected. Any such involvement should be disclosed at the pre-filing meeting.
Key timing requests, deadlines	Taxpayers must submit an APA application before the beginning of the first accounting period to be covered by the APA.
APA term limits	There is a five-year maximum term for an APA (excluding rollback years).
Filing fee	There is no filing fee.
Rollback availability	Rollbacks are available subject to the applicable time limits of the jurisdictions involved in the APA; the relevant facts and circumstances; and whether there are any ongoing audits, examinations, appeals or judicial proceedings in respect of the periods or transactions which are to be covered by the rollback.
Collateral issues	No specific guidance; however, the issue of whether there is PE or no PE must be dealt with prior to filing a formal application.

PRE-FILING REQUIREMENTS

<p>Overview</p>	<p>The Taxpayer is encouraged to contact the Revenue to discuss the APA application in a pre-filing meeting on an informal basis. The meeting will include a discussion of the following:</p> <ul style="list-style-type: none"> • a high-level overview of the business and corporate structure of the Taxpayer and MNE; • the parties to the APA and the jurisdictions involved; • the nature of the transactions to be covered under the APA, years to be covered and the amounts involved; • the proposed TP method (if decided upon); • a high-level overview of any transfer pricing audits related to the transaction subject of the APA discussions; and • any other information which the Taxpayer considers important and relevant to the APA application.
<p>Anonymous pre-filing availability</p>	<p>Anonymous pre-filing is available; however, the Revenue strongly recommends pre-filing meetings are conducted on a named basis. The purpose of the pre-filing meeting is to enable parties to establish whether an APA is appropriate. Revenue do not accept all applications and this enables them to identify issues at early stage.</p>

APPLICATION REQUIREMENTS

Content of application	<p>Taxpayers must submit three hard copies of the APA application to the Director of the Transfer Pricing Branch of the Revenue. The application must include:</p> <ul style="list-style-type: none">• an executive summary;• details on the company background;• an industry analysis;• relevant financial information (including statements and projections);• an economic analysis (covering the proposed TP method, search for comparables and any adjustments); and• details of any related audits. <p>The Revenue will consult with the foreign tax authorities involved prior to acceptance into the program. Once satisfied that the transaction is suitable for an APA, the Revenue will issue an acceptance letter to the Taxpayer. Original documents should not be submitted to the Revenue, as all documentation will be retained. The Revenue may request a site visit and interviews with appropriate personnel from the Taxpayer's organization during the processing of the application.</p>
Language	The documentation should be submitted in Irish or English.

OTHER PROCEDURAL CONSIDERATIONS

<p>General</p>	<p>The Revenue follows a standard pre-filing, application and monitoring process. There are no unique procedural aspects.</p>
<p>Monitoring & compliance</p>	<p>Taxpayers must file an Annual Report by the due date for filing of their annual corporate income tax return. The Annual Report must include the following:</p> <ul style="list-style-type: none"> • a statement of compliance with the APA, including critical assumptions; • a statement of whether critical assumptions remain valid throughout the period of the APA; • financial data for the period comparing the actual results for the covered transaction with the targeted arm's length result agreed in the APA; • details of any compensating adjustments made to stay within the targeted arm's length range agreed in the APA; • details of any pending requests to modify, renew or cancel the APA; and • identification and correction of any incorrect or incomplete information which has been submitted to the Revenue which comes to the Taxpayer's attention prior to submission of the Annual Report which may have a material impact on the APA. <p>Additional information may be requested, and the Taxpayer must notify the Revenue if the foreign CA(s) request additional information.</p>

Renewal procedure

The Taxpayer is encouraged to make early contact with the Revenue to request the renewal of an APA. The Taxpayer may be required to outline any changes to the material facts and circumstances and critical assumptions from the original APA, and address the continued appropriateness of the TP method employed. Where transfer pricing issues differ significantly from the original APA, the Revenue may require the Taxpayer to submit an application for a new APA.

MAP Program

KEY FEATURES

Competent authority	The International Tax Division of the Revenue (Revenue)
Relevant provisions	Guidance 'International Tax: Mutual Agreement Procedures' available on the Revenue's website.
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 Ireland is signatory.
Key timing requests, deadlines	Most of Ireland's DTTs permit Taxpayers to present a case to the Revenue 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. Taxpayers have three years to present a case to the Revenue under the EU Arbitration Convention (90/436/EEC).

APPLICATION REQUIREMENTS

Content of application

In order for a MAP request to be considered a valid request under the relevant DTT, it must include the following, at a minimum:

- the tax period(s) concerned;
- the nature of the action giving rise, or expected to give rise, or expected to give rise, to taxation not in accordance with the relevant DTT; and
- the full names and addresses of the parties to which the MAP relates.

In order for a MAP request to be considered a valid request under article 6(1) of the EU Arbitration Convention, it must include the following at a minimum:

- the identification of the Taxpayer to which the MAP relates and the other parties to the relevant transactions;
- the tax period(s) concerned;
- details of the relevant facts and circumstances of the case;
- copies of any tax assessment notices, tax audit reports or equivalent documents leading to the alleged double taxation;
- details of any appeals and litigations initiated by the Taxpayer or other parties to the relevant transactions; and
- an explanation by the Taxpayer of why it considers that the principles of the EU Arbitration Convention have not been observed.

The information that must be included with a request for a MAP presented under either a DTT or the EU Arbitration Convention is set out below:

- identity (such as name, address, tax identification number or birth date, contact details) of the Taxpayer(s) covered in the MAP request and of the other parties to the relevant transaction(s);
- details of the relationship between the Taxpayer and the other parties to the relevant transaction(s);
- the legal basis for the request i.e. the specific DTT and/or the EU Arbitration Convention including the provision(s) of the specific article(s) which the Taxpayer believes is not being correctly applied by either one or both countries (and to indicate which country and the contact details of the relevant person(s) in that country);
- facts and circumstances of the case (including any documentation to support these facts such as financial statements and intercompany legal agreements, the taxation year(s) or period(s) involved and the amounts involved, in both the local currency and foreign currency);
- an analysis of the issues involved (supported with relevant documentation, for example, tax assessment notices, tax audit report or equivalent leading to the alleged double taxation, evidence of tax paid (where applicable)), including:
 - the Taxpayer's interpretation of the application of the specific DTT provision(s), to support the basis for making a claim that the provision of the specific DTT is not correctly applied by either one or both countries; and/or
 - an explanation by the enterprise why it considers that the principles set out in Article 4 of the EU Arbitration Convention have not been observed.

(cont.)

- the request should state whether the issue(s) presented in the MAP request have been previously dealt with, for example, in an advance ruling, APA, settlement agreement or by any tax tribunal or court. This includes details of any appeals and litigation procedures initiated by the Taxpayer or the other parties to the relevant transactions. If yes, a copy of these rulings, agreements or any court decisions concerning the case should be provided;
- any other information or documentation requested by the Revenue. Responses to requests for additional information should be complete and submitted within the time stipulated in the request for such information or documentation;
- an undertaking that the enterprise shall respond as completely and quickly as possible, providing wholly accurate and complete information, to all reasonable and appropriate requests made; and
- confirmation of whether the MAP request was also submitted to the tax authority of the relevant foreign country – if so, the MAP request should make this clear, together with the date of such submission, the name and the designation of the person or the office to which the MAP request was submitted. A copy of that submission (including all documentation filed with that submission) should also be provided unless the content of both MAP submissions are the same.

For MAP requests relating to transfer pricing and the attribution of profits to a PE, the information should be sent to the Director of the Transfer Pricing Branch. For non-transfer pricing MAP requests, the information should be sent to the Director of the Tax Treaties Branch. The Taxpayer must undertake to respond as completely and quickly as possible to requests by the Revenue for further information.

Language	The documentation should be submitted in Irish or English.
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OTHER PROCEDURAL CONSIDERATIONS

Interaction with domestic proceedings	Taxpayers may pursue Irish domestic legal proceedings separately from MAP, and while judicial or administrative proceedings are ongoing. In such cases, the Revenue will generally request that the Taxpayer agrees to the suspension of its judicial or administrative remedies pending the outcome of the MAP. If the Taxpayer does not agree to suspend the administrative or judicial remedies, the Revenue will delay the MAP process pending the outcome of the administrative or judicial proceedings. Taxpayers may also request MAP assistance from the Revenue where a decision has been rendered by an Irish court or the Appeal Commissioners; however, the Revenue cannot derogate in the MAP negotiations from a decision of the Appeal Commissioners or the highest court in which the matter is heard.
Arbitration	As Ireland 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. 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.

STATISTICS

APA	There were eight APA application requests in 2017 and two granted applications. The Revenue has had an APA program since 2016, however APA applications were processed by the Revenue prior the establishment of the formal program.
MAP	Ireland had a total of 11 new MAP applications and 12 completed cases in 2017.

Double Taxation Treaty Network

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

Armenia	Egypt	Kuwait
Australia	Estonia ^(iv)	Latvia
Austria	Finland	Lithuania
Bahrain	France	Luxembourg
Belarus	Georgia	Macedonia
Belgium	Germany ^(iv)	Malaysia
Bosnia-Herzegovina	Greece	Malta
Botswana ^(iv)	Hong Kong	Mexico ⁽ⁱ⁾
Bulgaria	Hungary	Moldova
Canada ⁽ⁱ⁾	Iceland	Montenegro
Chile	India	Morocco
China	Israel ⁽ⁱ⁾	Netherlands
Croatia	Italy	New Zealand
Cyprus	Japan	Norway
Czech Republic	Kazakhstan ^(iv)	Pakistan ^(iv)
Denmark	Korea (Republic of)	Panama

Poland	Slovak Republic	United Arab Emirates
Portugal	Slovenia	Ukraine ^(IV)
Qatar	South Africa	United Kingdom
Romania	Spain	United States ^(I)
Russia	Sweden	Uzbekistan
Saudi Arabia	Switzerland	Vietnam
Serbia	Thailand ^(IV)	Zambia ^(IV)
Singapore	Turkey	

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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