



# APA & MAP Country Guide 2019 – Italy

CONNECTING THE DOTS OF INTERNATIONAL TAX CONTROVERSY



# Italy

## APA Program

### KEY FEATURES

<b>Competent authority</b>	Central Directorate of Assessment of the Italian Revenue Agency (the Agency)
<b>Relevant provisions</b>	Article 31-ter ph. 1, of the Presidential Decree No. 600 of 29 September 1973; and  Statement of Practice No. 2016/42295, issued by the Italian Revenue Agency.
<b>Types of APAs available</b>	Unilateral, bilateral, and multilateral APAs are available.
<b>Acceptance criteria</b>	<p>Taxpayers are eligible to apply for an APA if they:</p> <ul style="list-style-type: none"> <li>• are resident companies that are owned by, own, or are subject to common control by a non-resident company;</li> <li>• hold stakes in the assets, funds or capital of non-resident Taxpayers, or have stakes in the assets, funds or capital held by non-resident Taxpayers; and</li> <li>• operate in Italy through a PE, or operate in Italy through a PE, or residents of Italy that operate abroad through a PE.</li> </ul>
<b>Key timing requests, deadlines</b>	<p>APA applications must be submitted before submission of a tax return. The Agency will either accept or reject the application within 30 days from its notification. The entire procedure shall be concluded within 180 days from the notification of the APA.</p> <p>Please note, however, that according to the Agency, this time limit is non-mandatory.</p>

<b>APA term limits</b>	There is a five-year term for an APA, including the year when the APA is concluded and the following four.
<b>Filing fee</b>	There is no filing fee.
<b>Rollback availability</b>	<p>A limited rollback is available up to the year when the APA was filed if:</p> <ul style="list-style-type: none"> <li>• the APA is the result of a MAP (for bilateral or multilateral APAs); or</li> <li>• the facts and circumstances underlying the APA are equally met in the previous years (unilateral APAs)</li> </ul>
<b>Collateral issues</b>	No specific guidance.

## PRE-FILING REQUIREMENTS

<b>Overview</b>	Taxpayers may request a pre-filing meeting with the Agency. A formal APA application can then be submitted.
<b>Anonymous pre-filing availability</b>	Pre-filing is available on an anonymous basis.

**APPLICATION REQUIREMENTS**

<p><b>Content of application</b></p>	<p>The APA application must include:</p> <ul style="list-style-type: none"> <li>• the Taxpayer name and address of its registered office;</li> <li>• the applicable tax code and/or VAT;</li> <li>• the name and contact details of other related entities;</li> <li>• an outline of the transactions covered under the APA;</li> <li>• a documentation that is evidence of the international transaction to be covered under the proposed APA</li> <li>• summary description of operations and related goods and services; and</li> <li>• the proposed TP method and reasons why this is the most appropriate in the circumstances.</li> </ul> <p>The APA application may also include documentation that is evidence of the international transaction to be covered under the proposed APA. If successful, the Agency will send a copy of the agreement to the foreign EU tax authorities where the counterparties are resident for tax purposes.</p>
<p><b>Language</b></p>	<p>No specific guidance.</p>
<p><b>SME provisions</b></p>	<p>No specific guidance.</p>

---

**OTHER PROCEDURAL CONSIDERATIONS**

<b>General</b>	The Agency follows a standard pre-filing, application and monitoring process. There are no unique procedural aspects.
<b>Monitoring &amp; compliance</b>	Taxpayers must prepare and make available documents and information at the request of the Agency. The Agency may also request access to the Taxpayer's premises.
<b>Renewal procedure</b>	Applications for the renewal of APAs are required to be lodged at least 90 days before expiry.

## MAP Program

### KEY FEATURES

<b>Competent authority</b>	Central Directorate of Assessment of the Italian Revenue Agency (the Agency)
<b>Relevant provisions</b>	There are no specific provisions for the MAP procedure in domestic law. Taxpayers must rely on the MAP provisions under DTTs or under the EU Arbitration Convention (90/436/EEC).
<b>Acceptance criteria</b>	A MAP may be commenced for any situation which falls under the provisions of an applicable DTT concluded by Italy, or under the EU Arbitration Convention.
<b>Key timing requests, deadlines</b>	Taxpayers must submit a MAP request within three years from the first notification to the Taxpayer of the actions giving rise to taxation not in accordance with the DTT. However, under DTTs time limits may vary, and the relevant provisions should be consulted for the applicable time limit. Taxpayers have three years to present a case to the Tax authority under the EU Arbitration Convention.

## APPLICATION REQUIREMENTS

<b>Content of application</b>	<p>Taxpayers should submit the following information:</p> <ul style="list-style-type: none"> <li>• name, address and tax identification number;</li> <li>• the tax domicile of the taxpayer or of any legitimate recipient to which the tax administration can address any communication regarding the state of the MAP;</li> <li>• an illustration of the facts and circumstances of the case, with a specific reference to the tax years in which double taxation occurred or might occur;</li> <li>• a description of any administrative or legal proceeding undertaken in Italy, such as a request for a tax settlement or the submission of a legal appeal;</li> <li>• a description of the remedies, if any, activated in the other Contracting State to eliminate the double taxation;</li> <li>• a copy of the tax documents which resulted, or that might result, in taxation not in accordance with the provisions of the DTT (in particular, a copy of the notice denying the refund or, in case of an implied denial, a copy of the refund claim submitted pursuant to Article 37, second paragraph, and 38 of the Presidential Decree No. 602 of 1973); and</li> <li>• any other form of documentation instrumental to ease the scrutiny by the competent authorities involved in the MAP.</li> </ul>
<b>Language</b>	No specific guidance.

**OTHER PROCEDURAL CONSIDERATIONS**

<p><b>Interaction with domestic proceedings</b></p>	<p>Under Italian Constitutional law, a court decision takes precedence over an agreement between competent authorities. Most of the DTTs concluded by Italy provide that the MAP is not an alternative to the domestic proceedings which shall be, in any case, pre-emptively initiated. In order to prevent conflicts between a tax court decision and the agreement between the tax authorities, the proceedings may be suspended during the MAP negotiations. If the MAP is activated under the EU Arbitration Convention, the initiation of the domestic proceedings is not mandatory.</p>
<p><b>Arbitration</b></p>	<p>As Italy 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.</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. The availability of Arbitration clauses under the DTTs concluded by Italy may vary and the relevant provisions should be consulted.</p>

## STATISTICS

<b>APA</b>	There were 143 APA application requests in 2015 and 27 completed applications. The average completion time was 40 months for bilateral and multilateral APAs. The Italian Revenue Agency has had an APA program since 2003.
<b>MAP</b>	Italy had a total of 583 active MAP applications as of December 31, 2017, of which 392 on transfer pricing cases and 191 on other cases. The average time needed to close MAP, for cases started as from January 1, 2016, is 11 months for transfer pricing cases, and 7 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	Czech Republic	Israel
Algeria	Denmark	Ivory Coast
Argentina	Ecuador	Japan
Armenia	Egypt	Jordan
Australia	Estonia	Kazakhstan
Austria	Ethiopia	Korea (Republic of)
Azerbaijan <sup>(iv)</sup>	Finland	Kuwait
Bangladesh	France	Latvia
Barbados <sup>(iv)</sup>	Georgia <sup>(i)</sup>	Lebanon
Belarus	Germany	Lithuania
Belgium	Ghana	Luxembourg
Bosnia-Herzegovina	Greece	Macedonia
Brazil	Hungary	Malaysia
Bulgaria	Hong Kong <sup>(i)</sup> , <sup>(iv)</sup>	Malta
Canada <sup>(i)</sup>	Hong Kong <sup>(iv)</sup>	Mauritius
Chile <sup>(iv)</sup>	Hungary	Mexico <sup>(iv)</sup>
China	Iceland	Morocco
Congo <sup>(iv)</sup>	India	Moldova
Croatia	Indonesia	Mozambique
Cyprus	Ireland	Netherlands

New Zealand	Slovak Republic	Tunisia
Norway	Slovenia	Turkey
Oman	South Africa	Uganda
Pakistan	Spain	Ukraine <sup>(IV)</sup>
Philippines	San Marino <sup>(IV)</sup>	United Arab Emirates
Poland	Singapore	United Kingdom
Portugal	Sri Lanka	United States <sup>(I)</sup>
Qatar	Sweden	Uzbekistan
Romania <sup>(IV)</sup>	Switzerland	Venezuela
Russia	Syria	Vietnam
San Marino <sup>(IV)</sup>	Taipei <sup>(VIII)</sup>	Zambia
Saudi Arabia	Tanzania	
Senegal	Thailand	
Serbia and Montenegro	Trinidad and Tobago	

## 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](http://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