



APA & MAP Country Guide 2019 – Japan

CONNECTING THE DOTS OF INTERNATIONAL TAX CONTROVERSY



Japan

APA Program

KEY FEATURES	
Competent authority	National Tax Agency (NTA) and relevant regional tax bureau (Competent tax authorities)
Relevant provisions	Chapter 6 of the Commissioner's Directive on the Operation of Transfer Pricing (Administrative Guidelines) 2001 (amended on February 16, 2018), issued by the NTA.
Types of APAs available	Unilateral, bilateral, and multilateral APAs are available.
Acceptance criteria	No specific guidance.
Key timing requests, deadlines	APA applications must be submitted by the first day of the first fiscal year to be covered. If a bilateral or multilateral with a request for rollback is filed before a TP examination commences, the competent tax authorities will not commence an examination of the rollback years. However, if an examination has already commenced, the examination cannot be stopped by filing an APA application.
APA term limits	There is a five-year maximum term for an APA.
Filing fee	There is no filing fee.
Rollback availability	Rollback of the APA terms is available for bilateral APAs for up to six prior tax years where the TP method is regarded by the Competent tax authorities as appropriate for those prior years. Rollback is not available for unilateral APAs.
Collateral issues	No specific guidance.

PRE-FILING REQUIREMENTS

Overview	<p>Taxpayers are strongly recommended to request a pre-filing meeting with the competent tax authorities, during which the following information will be discussed:</p> <ul style="list-style-type: none">• necessary items for formal filing of an APA application;• information necessary for the Taxpayer to decide whether to file the APA and what kind of APA filing is appropriate;• whether the competent tax authorities can accept the APA application; and• timeline of the application.
Anonymous pre-filing availability	Anonymous pre-filing is available.

APPLICATION REQUIREMENTS

<p>Content of application</p>	<p>Formal APA applications must include:</p> <ul style="list-style-type: none"> • an outline of the transaction covered by the proposed APA and organization(s) conducting those transactions; • the arm's length price computation method and explanation of why the proposed method is the most appropriate; • critical assumptions; • transaction flows, money flows and currencies used; • description of the capital relationships and 'control in substance' relationships between the foreign related parties and the Taxpayer; • analysis on functions, risks and assets of the Taxpayer and related parties; • description of the business operations, accounting and circumstances of the applicant and foreign related parties for the past three business years; • outline of the issues concerned in any audit, administrative appeal, or lawsuit pertaining to transfer pricing of which the related party is subject in its jurisdiction; • documentation that proves, based on TP methods applied to the three business years prior to the years covered by the proposed APA, that the TP method is the most rational; and • overview of the ultimate parent company of the multinational enterprise to which the Taxpayer belongs (for unilateral APA application only).
<p>Language</p>	<p>The documentation should be submitted in Japanese.</p>
<p>SME provisions</p>	<p>No specific guidance</p>

OTHER PROCEDURAL CONSIDERATIONS

General	A Taxpayer filing a formal APA application with paid-in capital of JPY100 million (approx. USD910,000) or more must be submitted to the commissioner of the Taxpayer's regional tax bureau. Taxpayers filing applications with paid-in capital of less this amount are required to submit applications to the director of the Taxpayer's district tax office.
Monitoring & compliance	<p>The Taxpayer must submit to the Competent tax authorities a report demonstrating compliance with the APA. The submission must be made prior to the deadline for filing the final tax return and must include:</p> <ul style="list-style-type: none"> • evidence that the Taxpayer has filed its return for the covered years in compliance with the APA; • income statements of the applicant and foreign related parties (where deemed necessary); • critical assumptions that were the premise for the APA; • where results of the confirmed transaction do not comply with the APA, an explanation of the adjustments to prices that the Taxpayer has carried out; and • financial circumstances of both the Taxpayer and the foreign related parties during the covered years. <p>The regional tax bureau may also conduct audits of Taxpayer compliance with APAs, involving a site visit and request for additional information to verify the Taxpayer's statements in the annual compliance reports.</p>
Renewal procedure	An APA renewal request will go through the same stages as the initial APA request.

MAP Program

KEY FEATURES

Competent authority	National Tax Agency (NTA) and relevant regional tax bureau (Competent tax authorities)
Relevant provisions	Commissioner's Directive on the Mutual Agreement Procedure, and supplementary guidance issued by the NTA.
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 Japan is signatory.
Key timing requests, deadlines	Most of Japan's DTTs permit Taxpayers to present a case to the Tax Authorities 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.

APPLICATION REQUIREMENTS

Content of application	<p>Requests for MAP assistance must be made by submitting, Application for the Mutual Agreement Procedure (Form 1), together with the following documentation:</p> <ul style="list-style-type: none">• a copy of a letter of assessment of the relevant taxation;• written description of the facts related to the taxation and outline of position of the applicant or foreign related entity to such taxation;• written description of how the taxation will result in taxation not in accordance with the relevant DTT;• details of any relevant legal proceedings in relation to the taxation from foreign jurisdiction;• if the taxation is in relation to transfer pricing, documentation describing the relationship of the related entities involved in the transaction(s);• copies of any MAP requests made to foreign tax authorities; and• any other documents that are relevant to the MAP request. <p>If the MAP request relates to a transaction(s) involving a consolidated subsidiary, its consolidated parent company must submit the application.</p>
Language	The documentation should be submitted in Japanese.

OTHER PROCEDURAL CONSIDERATIONS

Interaction with domestic proceedings	No specific guidance
Arbitration	Japan has signed several revised DTTs containing new arbitration procedures to be used where Japan and the relevant foreign jurisdiction cannot reach agreement within a specified time frame. Furthermore, since Japan is a signatory to the MLI, arbitration procedures are available under some of the applicable DTTs (even without arbitration provisions in the original text) through the application of the MLI.

STATISTICS

APA	There were 166 active bilateral APA applications during NTA's operation year 2017 (as at June 30, 2018) and 122 completed applications. The NTA has had an APA program since 1987.
MAP	Japan had a total of 496 pending MAP cases as of June 30, 2018. The average time needed to close MAP cases is 30.7 months for APA cases, and 27.7 months for other transfer pricing related cases.

Double Taxation Treaty Network

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

Armenia ⁽ⁱⁱⁱ⁾ , ^(vi)	Egypt ^(vi)	Lithuania ⁽ⁱ⁾ , ^(iv) , ^(vi)	South Korea ^(vi)
Australia(I*), ^(vi)	Estonia ⁽ⁱ⁾ , ^(iv) , ^(vi)	Luxembourg ^(vi)	Spain ⁽ⁱ⁾ , ^(v) , ^(vi)
Austria ⁽ⁱ⁾ , ^(iv) , ^(vi)	Finland ^(vi)	Malaysia ^(vi)	Sri Lanka ^(vi)
Azerbaijan ⁽ⁱⁱⁱ⁾ , ^(vi)	Fiji ^(vi)	Mexico ^(vi)	Sweden ⁽ⁱ⁾ , ^(iv) , ^(vi)
Bahamas ^(iv) , ^(vi)	France(I*), ^(vi)	Moldova ⁽ⁱⁱⁱ⁾ , ^(vi)	Switzerland ^(vi)
Bangladesh ^(vi)	Georgia ⁽ⁱⁱⁱ⁾ , ^(vi)	Netherlands ⁽ⁱ⁾ , ^(vi)	Taiwan, China ⁽ⁱⁱⁱ⁾ , ^(iv) , ^(vi)
Belarus ⁽ⁱⁱⁱ⁾ , ^(vi)	Germany ⁽ⁱ⁾ , ^(iv) , ^(vi)	New Zealand ⁽ⁱ⁾ , ^(vi)	Tajikistan ⁽ⁱⁱⁱ⁾ , ^(vi)
Belgium ⁽ⁱ⁾ , ^(iv) , ^(vi)	Guernsey ^(vi)	Norway ^(vi)	Thailand ^(vi)
Bermuda ^(vi)	Hong Kong ⁽ⁱ⁾ , ^(vi)	Oman ^(iv) , ^(vi)	Turkey ^(vi)
Brazil ^(vi)	Hungary ^(vi)	Pakistan ^(vi)	Turkmenistan ⁽ⁱⁱⁱ⁾ , ^(vi)
Brunei ^(vi)	Iceland ⁽ⁱ⁾ , ^(iv) , ^(vi)	Philippines ^(vi)	Ukraine ⁽ⁱⁱⁱ⁾ , ^(vi)
Bulgaria ^(vi)	India ^(iv) , ^(vi)	Poland ^(vi)	United Arab
Canada ^(vi)	Indonesia ^(vi)	Portugal ⁽ⁱ⁾ , ^(vi)	Emirates ^(iv) , ^(vi)
Cayman Islands ^(vi)	Ireland(I*), ^(vi)	Qatar ^(iv) , ^(vi)	United Kingdom ⁽ⁱ⁾ , ^(iv) , ^(vi)
Chile ⁽ⁱ⁾ , ^(iv) , ^(vi)	Israel ^(vi)	Romania ^(vi)	United States ⁽ⁱ⁾ , ^(v) , ^(vi)
China ^(vi)	Italy ^(vi)	Russia ^(iv) , ^(vi)	Uzbekistan ⁽ⁱⁱⁱ⁾ , ^(vi)
Colombia ^(v) , ^(vi)	Jersey ^(vi)	Saudi Arabia ^(vi)	Vietnam ^(vi)
Croatia ^(v) , ^(vi)	Kazakhstan ^(vi)	Singapore ^(vi)	Zambia ^(vi)
Czech Republic ^(vi)	Kirghiz ⁽ⁱⁱⁱ⁾ , ^(vi)	Slovakia ^(vi)	
Denmark ⁽ⁱ⁾ , ^(iv) , ^(vi)	Kuwait ^(vi)	Slovenia ⁽ⁱ⁾ , ^(iv) , ^(vi)	
Ecuador ^(v) , ^(vi)	Latvia ⁽ⁱ⁾ , ^(iv) , ^(vi)	South Africa ^(vi)	

Notes

- i. denotes treaties with MAP arbitration provisions. (I* denotes treaties to which MAP arbitration provisions under the MLI apply)
- 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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