



# APA & MAP Country Guide 2019 – Korea

CONNECTING THE DOTS OF INTERNATIONAL TAX CONTROVERSY



# Korea (Republic of)

## APA Program

KEY FEATURES	
<b>Competent authority</b>	National Tax Service (NTS)
<b>Relevant provisions</b>	Law for the Coordination of International Tax Affairs (LCITA)
<b>Types of APAs available</b>	Bilateral and unilateral APAs are available.
<b>Acceptance criteria</b>	No specific guidance.
<b>Key timing requests, deadlines</b>	The application for an APA must be submitted to the NTS by the end of the first taxable year to be covered by the APA.
<b>APA term limits</b>	There is a five-year maximum term for an APA.
<b>Filing fee</b>	There is no filing fee.
<b>Rollback availability</b>	Rollback is available for bilateral and multilateral APAs for up to five years, and unilateral APAs for up to three years.
<b>Collateral issues</b>	No specific guidance.

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**PRE-FILING REQUIREMENTS**

<b>Overview</b>	Taxpayers are encouraged to request a pre-filing meeting with the NTS to discuss the APA process, key points of the application, required information and documentation to be submitted. Key points discussed in a pre-filing meeting include: <ul style="list-style-type: none"><li>• background of the APA request;</li><li>• records of tax returns, such as operating margins that are filed prior to the tax years covered by the APA;</li><li>• eligibility of the taxpayer to apply for an APA;</li><li>• eligibility of the transaction to be covered; and</li><li>• appropriateness of the proposed TP method.</li></ul>
<b>Anonymous pre-filing availability</b>	Anonymous pre-filing is available.

**APPLICATION REQUIREMENTS**

<p><b>Content of application</b></p>	<p>Taxpayers should submit the APA application form (Form 3 of art 3, section 1 of the Ministerial Enforcement Decree of the LCITA) containing information such as the covered APA term, covered transactions, involved parties and the TP method, as well as the following documentation:</p> <ul style="list-style-type: none"> <li>• business profile, organization, and investment relationship;</li> <li>• financial statements for the past three years, a copy of tax returns, a copy of contracts for international transactions, and any other relevant documents;</li> <li>• documents detailing suggested TP method;</li> <li>• method used to adjust difference between actual transaction prices and arm's length price;</li> <li>• where the taxpayer requests a MAP, the MAP application form as designated by the Ministry of Strategy and Finance; and</li> <li>• other documentation supporting the appropriateness of the TP method suggested for an APA.</li> </ul>
<p><b>Language</b></p>	<p>Documentation is required to be submitted in Korean, unless prior approval from the NTS is given to submit in English.</p>
<p><b>SME provisions</b></p>	<p>A simplified APA application process is available to SMEs with annual revenue of less than KRW50 billion. Eligible taxpayers can expect to complete the APA application process within one year.</p>

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## OTHER PROCEDURAL CONSIDERATIONS

<b>General</b>	The NTS follows a standard pre-filing, application and monitoring process. There are no unique procedural aspects.
<b>Monitoring &amp; compliance</b>	<p>Taxpayers must submit four copies of an Annual Report within six months from the following day of corporate tax return period for the covered years. The Annual Report must include:</p> <ul style="list-style-type: none"> <li>• critical assumptions and their realization as a prerequisite of the approved TP method;</li> <li>• arm's length price calculated by the approved TP method and its calculating process;</li> <li>• where applicable, the method used to adjust the difference between actual transaction prices and arm's length price; and</li> <li>• other information agreed to be included in the Annual Report.</li> </ul> <p>The NTS may cancel an APA if an Annual Report is not filed, or contains false information on material matters.</p>
<b>Renewal procedure</b>	Taxpayers may request renewal of an APA when it expires.

## MAP Program

### KEY FEATURES

<b>Competent authority</b>	NTS
<b>Relevant provisions</b>	Articles 22-27-2 of the LCITA.
<b>Acceptance criteria</b>	<p>Taxpayers may submit a MAP request where:</p> <ul style="list-style-type: none"> <li>taxes that have been or may be assessed by the tax authorities of the other contracting state in contravention of the provisions of a DTT; and</li> <li>it is necessary to coordinate with the other contracting state with regard to a tax adjustment in accordance with the provisions of a DTT.</li> </ul>
<b>Key timing requests, deadlines</b>	No specific guidance.

### APPLICATION REQUIREMENTS

<b>Content of application</b>	No specific guidance.
<b>Language</b>	Documentation is required to be submitted in Korean.

## OTHER PROCEDURAL CONSIDERATIONS

<b>Interaction with domestic proceedings</b>	There is no requirement to exhaust all domestic procedures before a MAP is commenced, and a domestic appeal can be underway when a MAP commences. If a final decision is made by a court during the process of a MAP, MAP negotiations shall be terminated as of the day when the court decision is final.
<b>Arbitration</b>	No specific guidance

## STATISTICS

<b>APA</b>	There were 158 active APA applications during income year 2015 (as at December 31, 2015 ) and 42 completed applications. The average completion time was 29 months for bilateral APAs and 21 months for unilateral APAs. The NTS has had an APA program since 1995.
<b>MAP</b>	The Republic of Korea had a total of 84 active MAP applications as of December 31, 2017. The average time needed to close MAP cases is 40 months for transfer pricing cases, and 37 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	Ecuador <sup>(b)</sup>	Italy
Algeria	Egypt	Japan
Australia	Estonia	Jordan
Austria	Ethiopia <sup>(b)</sup>	Kazakhstan
Azerbaijan	Fiji	Kenya <sup>(b)</sup>
Bahrain <sup>(b)</sup>	Finland	Korea (Democratic People's Republic)
Bangladesh	France	Kuwait
Belarus	Gabon <sup>(b)</sup>	Kyrgyzstan <sup>(b)</sup>
Belgium	Georgia <sup>(b)</sup>	Laos
Brazil	Germany	Latvia
Brunei <sup>(b)</sup>	Greece	Luxembourg
Bulgaria	Hong Kong <sup>(b)</sup>	Malaysia
Canada	Hungary	Malta
Chile	Iceland	Mexico
China	India <sup>(b)</sup>	Mongolia
Colombia	Indonesia	Morocco
Croatia	Iran <sup>(b)</sup>	Myanmar
Czech Republic	Ireland	Nepal
Denmark	Israel	Netherlands



New Zealand	Russia	Thailand
Norway	Saudi Arabia	Tunisia
Oman	Serbia <sup>(v)</sup>	Turkey
Pakistan	Singapore	Turkmenistan <sup>(vi)</sup>
Panama	Slovak Republic	Ukraine
Papua New Guinea	Slovenia	United Arab Emirates
Peru <sup>(v)</sup>	South Africa	United Kingdom
Philippines	Spain	United States
Poland	Sri Lanka	Uruguay <sup>(v)</sup>
Portugal	Sweden	Uzbekistan
Qatar	Switzerland	Venezuela
Romania	Tajikistan <sup>(v)</sup>	Vietnam

## 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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