Advance Pricing Arrangement (APA) Statistics Reporting Framework

ENHANCING TAX CERTAINTY

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OECD
BETTER POLICIES FOR BETTER LIVES

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Enhancing Tax Certainty

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This document was approved by the OECD/G20 Inclusive Framework on BEPS on 14 December 2022 and prepared for publication by the OECD Secretariat.

Introduction

1.   The number of transfer pricing Mutual Agreement Procedure ("MAP") cases keep increasing every year as indicated by the MAP Statistics. Accordingly, being able to prevent these disputes is a key tenet of an effective and efficient tax administration. Advance Pricing Arrangements ("APAs") give taxpayers and jurisdictions tax certainty in advance in relation to the tax treatment of the relevant covered transaction(s) for fiscal years within a defined period.[1]

2.   APAs supplement traditional administrative, judicial and treaty mechanisms for resolving transfer pricing disputes by preventing those disputes from occurring. APAs, and in particular, bilateral and multilateral APAs, involve both the taxpayer and the affected tax administrations and provide comprehensive tax certainty with respect to transfer pricing issues to taxpayers in a collaborative and transparent manner.

3.   Therefore, APAs play a significant part in the improvement of the tax certainty landscape in general through the prevention of transfer pricing disputes that may otherwise account for a significant portion of MAP cases. This would, in turn, ensure the swift resolution of the cases that do move to the MAP stage.

4.   A substantial amount of work has already been done by the Forum on Tax Administration ("FTA") and the FTA MAP Forum on APAs. The FTA MAP Forum, in conjunction with the FTA Large Business International Programme, has developed the Bilateral Advance Pricing Arrangement Manual ("BAPAM") (OECD, 2022[1]), which is intended as a guide for streamlining the bilateral APA process.[2] The BAPAM provides tax administrations and taxpayers with information on the operation of bilateral APAs and identifies 29 best practices. As part of the BAPAM's development, tax administrations have committed to assessing whether implementation of these best practices is appropriate, considering the circumstances of their own bilateral APA programme and the unique features of each application, so that the best practices are applied appropriately and with enough flexibility to improve current bilateral APA processes. The BAPAM also highlights what tax administrations expect from taxpayers in the bilateral APA process to facilitate a cooperative and collaborative process.

5.   In line with the progress that has been achieved with BAPAM (OECD, 2022[1]), the Inclusive Framework has agreed that as a next step forward, all Inclusive Framework members should start reporting annual statistics with respect to APAs ("APA Statistics") from 2024 onwards with respect to a previously concluded reporting cycle, which would be published on the OECD website, in a common format. APA Statistics would provide a more complete and more accurate picture of a jurisdiction's efforts concerning dispute prevention and resolution and would increase transparency in this regard. APA Statistics read in tandem with the MAP Statistics would also allow stakeholders to see a complete picture of a jurisdiction's efforts to prevent and resolve transfer pricing disputes. However, it is clarified that there would be no obligation for jurisdictions to match the data reported with treaty partners, and that there would be no monitoring of these Statistics under the existing Action 14 minimum standard.

6.   The agreed reporting framework for the reporting of APA Statistics is set out in this note. Section II sets out the statistics reporting templates for the reporting and publication of APA Statistics, including the definition of terms used.

APA Statistics Reporting and Publication

7.   Each jurisdiction that already has a bilateral/multilateral APA programme or can enter into such APAs under domestic law and/or tax treaties should report annual APA statistics, based on the criteria described in Annex A. Although these criteria seek to streamline the reporting of APA statistics,

jurisdictions may follow their own reporting cycles with respect to such reporting (i.e. report data in line with the 12-month period used for domestic or regional level reporting). In addition, jurisdictions may also apply their own definitions for the "Start Date" and "End Date" with respect to computing the average time taken to close APA cases. However, the reporting cycle and definitions of "Start Date" and "End Date" used should be disclosed by each jurisdiction. Jurisdictions are also allowed to provide the latest available data with respect to an annual reporting cycle used for domestic or regional reporting, if any, so long as the reporting cycle relevant to such data is disclosed. Jurisdictions may report any additional data with respect to their APA programmes for publication at their discretion, by using Table 2 in Annex A. In addition, matching of the reported data with the concerned treaty partners is not required.

8.   This data i.e. data with respect to the previous reporting year or the latest available data, should be reported from the 2024 calendar year onwards and would be published as described in Annex A.

9.   Accordingly, Annex A as well as Annex B containing definitions of terms and the rules for counting APA cases for the purposes of the APA Statistics would be considered part of this agreed framework and reporting template for publication. Jurisdictions should report their APA Statistics containing latest available data with respect to the relevant annual reporting cycle based on domestic or regional reporting or otherwise by 31 July of each year, for subsequent publication on the OECD website, along with the MAP Statistics for the reporting year concerned.

10.   In the event that the Action 14 minimum standard or terms of reference are revised in the future to add elements in relation to APAs, the APA Statistics Reporting Framework would be reviewed by the FTA MAP Forum to ensure that it aligns with the revisions. If no such revisions are made by 2027, the FTA MAP Forum will consider at that time whether the APA Statistics Reporting Framework is working well or requires amendment.

Reference

OECD (2022), *Bilateral Advance Pricing Arrangement Manual*, OECD Forum on Tax Administration, OECD Publishing, Paris, https://doi.org/10.1787/4aa570e1-en. [1]

Notes

[1] The IMF/OECD Tax Certainty Report considered APAs to be a key practical tool to enhance tax certainty. See the IMF/OECD Tax Certainty Report, March 2017, available at: www.oecd.org/tax/tax-policy/tax-certainty-report-oecd-imf-report-g20-finance-ministers-march-2017.pdf.

[2] Available at: www.oecd.org/tax/forum-on-tax-administration/publications-and-products/bilateral-advance-pricing-arrangement-manual-4aa570e1-en.htm.

Annex A.

Reporting of statistics with respect to Advance Pricing Arrangements (APAs) for the [YEAR/YEAR-YEAR] reporting period ([DAY] [MONTH] [YEAR] to [DAY] [MONTH] [YEAR]) by [Name of Jurisdiction]

Annex A or equivalent information should be submitted showing the latest available data with respect to a previous annual reporting cycle to the Secretariat (email: fta.map@oecd.org) by **31 July** of each calendar year starting from 2024 onwards for subsequent publication on the OECD website.

Jurisdictions should report their APA statistics based on the definition of terms and rules for counting MAP cases as contained in Annex B.

	Table 1: APA Statistics						
	APA inventory at the start of the reporting period	**No. of APA applications filed during the reporting period**	**No. of APAs granted during the reporting period**	**No. of APA applications rejected during the reporting period**	**No. of APA cases closed for other reasons**	**APA inventory at the end of the reporting period**	**Average time taken in months to grant APAs during the reporting period**
	Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
Row 1							
Reporting period followed: [DAY] [MONTH] [YEAR] to [DAY] [MONTH][YEAR]							
Definition of "Start Date" and "End Date" followed:							
Definition of "APAs granted during the reporting period" followed:							
Notes A reporting jurisdiction can include in this notes section any information which in its view would be useful in providing clarification or understanding on any of the statistics reported above.							

Notes:
1. Please note that this data has not been matched with the concerned treaty partners.
2. Jurisdictions that report data at a domestic/regional level may include a footnote linking to such data here as follows: "For more information with respect to APAs in this reporting cycle for [jurisdiction name], please see:[insert link]."

Table 2: Additional information (if any)		
XX	XX	...
Column 1	Column 2	Column….

Notes on Annex A

(i)   Column 1: APA inventory at the start of the reporting period

Enter in this column the APA inventory as defined in paragraph 1(e) of Annex B at the start of the reporting period as defined in paragraph 1(i) of Annex B.

(ii)   Column 2: Number of APA applications filed during the reporting period

Enter in this column the number of APA applications, as defined in paragraph 1(b) of Annex B, filed by the taxpayer during the reporting period, as defined in paragraph 1(i) of Annex B.

(iii) Column 3: Number of APAs granted during the reporting period

Enter in this column the number of APA concluded during the reporting period, as defined in paragraph 1(f) of Annex B.

(iv) Column 4: Number of APA applications rejected during the reporting period

Enter in this column the number of APA rejected during the reporting period, as defined in paragraph 1(g) of Annex B.

(v)   Column 5: Number of APA cases closed for other reasons

Enter in this column the number of APA cases closed for other reasons, as defined in paragraph 1(j) of Annex B.

(vi) Column 6: APA inventory at the end of the reporting period

Enter in this column the APA inventory as defined in paragraph 1(e) of Annex B at the end of the reporting period as defined in paragraph 1(i) of Annex B.

(vii)   Column 7: Average time taken in months to grant APAs during the reporting period

Enter in this column the average time taken in months to conclude APAs during the reporting period as defined in paragraph 1(h) of Annex B.

(viii)   Table 2: Additional information (if any)

Enter in this table any additional data points with respect to APAs that are voluntarily reported in line with domestic or regional reporting or otherwise.

Annex B.
Definition of terms and rules for APA statistics under the reporting template in Annex A

Jurisdictions shall apply the following definitions and counting methods for purposes of their APA statistics reporting as required under Annex A:

(a) APA

An APA is an arrangement that determines, in advance of controlled transactions, an appropriate set of criteria (e.g. method, comparables and appropriate adjustments thereto, critical assumptions as to future events) for the determination of the transfer pricing for those transactions over a fixed period of time.

(b) APA application

An APA application is an application filed by a taxpayer requesting for an APA.

(c) APA case

An APA case is any case where an APA application is filed that concerns two or more jurisdictions and the same question, seeking a joint solution from all jurisdictions concerned through a mutual agreement between the competent authorities concerned and is accepted into the APA programme of the jurisdiction concerned after being satisfied that the contents of the application and all supporting documentation are adequate and that the case is eligible or suitable for acceptance.

(d) Counting of APA cases

Where an APA application concerns the taxation of more than one taxpayer or concerns more than one entity in the jurisdiction filing APA Statistics, then the number of APA cases shall be equal to the number of taxpayers or entities in this jurisdiction.

A multilateral APA or APA application shall be considered as several bilateral APAs or APA applications and shall be counted in this manner for statistical purposes. Accordingly, a multilateral APA signed by or requested for from jurisdiction A, jurisdiction B and jurisdiction C is counted, from the perspective of State A, as two APAs or APA applications i.e. one bilateral APA or APA application between A and B and one bilateral APA or APA application between A and C.

An APA that is renewed for future years shall be counted as a new APA.

(e) APA inventory

APA inventory refers to APA applications and APA cases that are awaiting further action by a jurisdiction in terms of acceptance into the APA programme or discussions with other concerned jurisdictions and owing to this, the APA application is under consideration or the APA case remains unresolved.

(f) APAs granted during the reporting period

(i) Jurisdictions that report APA statistics at a domestic or regional level should clearly indicate the definition of "APAs granted during the reporting period" that they follow.

(ii) Jurisdictions that do not report APA statistics at a domestic or regional level could follow the following definition with respect to the "APAs granted during the reporting period":

An APA is granted during the reporting period where the competent authorities have entered into a mutual agreement with respect to the APA case and all subsequent formal proceedings that are required are fulfilled at any point during the reporting period.

(g) APA cases rejected during the reporting period

An APA case is rejected during the reporting period where an APA application is not accepted by the jurisdiction.

(h) Average time taken in months to grant APAs during the reporting period

(i) Jurisdictions that report APA statistics at a domestic or regional level should clearly indicate the definitions of "start" and "end" date that they follow for the purposes of computing the average time taken.

(ii) Jurisdictions that do not report APA statistics at a domestic or regional level could follow the following definitions with respect to the "start" and "end" date:

i. Start date: The date of receipt of the taxpayer's APA application containing all information required or, where bilateral discussions may commence following notification of an APA application in another jurisdiction, the date of notification by the treaty partner jurisdiction that receives the APA application from the taxpayer.

ii. End date: The date when the competent authorities enter into a mutual agreement with respect to the APA case.[1]

(i) Reporting period

Reporting period in Annex A refers to any 12-month period in the format [DAY] [MONTH] [YEAR] to [DAY] [MONTH] [YEAR] as determined by the reporting jurisdiction.

(j) APA cases closed for other reasons

APA cases where the competent authority ceases consideration of the case owing to the taxpayer withdrawing its APA application or where discussions with other competent authorities on the case led to no mutual agreement at any point during the reporting period or for any other reason.

Note

[1] The definition of "Start Date" and "End Date" under this paragraph would follow the explanations for these terms used under Best Practice 5 of the BAPAM.

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