

United States Dispute Resolution Profile

(Last updated: 14 Oct 2022)

General Information

- **United States tax treaties are available at:**

<https://home.treasury.gov/policy-issues/tax-policy/treaties>

The office of the U.S. competent authority lies within the Large Business and International Division ("LB&I") of the Internal Revenue Service ("IRS"). The Advance Pricing and Mutual Agreement program ("APMA") within the U.S. competent authority participates in negotiations under the mutual agreement procedure ("MAP") article of U.S. tax treaties.

- *APMA's Transfer Pricing Teams*: APMA's transfer pricing teams have primary responsibility for cases arising under the business profits and associated enterprises articles of U.S. tax treaties. APMA also has sole responsibility for requests involving unilateral, bilateral, or multilateral advance pricing agreements ("APAs").
- *Treaty Assistance and Interpretation Team ("TAIT")*: TAIT is the group in APMA that has primary responsibility for cases arising under all other articles of U.S. tax treaties.
- For example, TAIT has responsibility for the following:
 - Residency requests (dual residents seeking to determine their sole residence under the treaty);
 - Discretionary limitation on benefits ("LOB") requests;
 - Pension plan requests; and
 - TAIT also has primary responsibility for cases arising under U.S. tax treaties with respect to estate and gift taxes.

TAIT and APMA's transfer pricing teams each can consider cases arising under the permanent establishment articles of U.S. tax treaties and coordinate and collaborate on such cases and on any other cases as appropriate.

General information on the U.S. competent authority is available at:

www.irs.gov/Individuals/International-Taxpayers/Competent-Authority-Assistance

- For additional information about APMA: www.irs.gov/Businesses/Corporations/APMA

- **MAP requests should be made to:**

Information on how to make a MAP Request is provided in Rev. Proc. 2015-40, 2015-35 IRB 236 and is available at www.irs.gov/pub/irs-drop/rp-15-40.pdf. Depending on the nature of the issue(s), MAP requests should be sent to one of the following addresses:

Commissioner, Large Business and International Division, Internal Revenue Service
1111 Constitution Avenue, N.W., Washington, DC 20224
SE:LB:TTPO:APMA:K (Attention: APMA)

or

Commissioner, Large Business and International Division, Internal Revenue Service
1111 Constitution Avenue, N.W., Washington, DC 20224
SE:LB:TTPO:APMA:TAIT:K (Attention: TAIT)

- **APA requests should be made to:**

Information on how to make an APA Request is provided in Rev. Proc. 2015-41, 2015-35 IRB 263 and is available at www.irs.gov/pub/irs-drop/rp-15-41.pdf. In general, APA requests should be sent to the following address:

Commissioner, Large Business and International Division, Internal Revenue Service
1111 Constitution Avenue, N.W., Washington, DC 20224
SE:LB:TTPO:APMA:K (Attention: APMA)

s/n		Response	Detailed explanation	Where publicly available information and guidance can be found
A. Preventing Disputes				
1.	Are agreements reached by your competent authority to resolve difficulties or doubts arising as to the interpretation or application of your tax treaties in relation to issues of a general nature which concern, or which may concern, a category of taxpayers published?	Yes	-	See IRS webpage on competent authority agreements: https://www.irs.gov/individuals/international-taxpayers/competent-authority-arrangements .
2.	Are bilateral APA programmes implemented? If yes:	Yes	-	See IRS webpage on APMA: https://www.irs.gov/businesses/corporations/apma . For more information on APA Requests see Rev. Proc. 2015-41, 2015-35 IRB 263: https://www.irs.gov/pub/irs-drop/rp-15-41.pdf .
a.	Are roll-back of APAs provided for in the bilateral APA programmes?	Yes	-	See Rev. Proc. 2015-41, sections 2 and 5: https://www.irs.gov/pub/irs-drop/rp-15-41.pdf .
b.	Are there specific timeline for the filing of an APA request?	Yes	-	See Rev. Proc. 2015-41, section 3.03: https://www.irs.gov/pub/irs-drop/rp-15-41.pdf .
c.	Are rules, guidelines and procedures on how taxpayers can access and use bilateral APAs, including the specific information and documentation that should be submitted in a taxpayer's request for bilateral APA assistance, publicly available?	Yes	-	See Rev. Proc. 2015-41, section 3 and the Appendix: https://www.irs.gov/pub/irs-drop/rp-15-41.pdf .
d.	Are there any fees charged to taxpayers for a bilateral APA request?	Yes	-	See Rev. Proc. 2015-41, section 3.05 and the Appendix: https://www.irs.gov/pub/irs-drop/rp-15-41.pdf .

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e.	Are statistics relating to bilateral APAs publicly available?	Yes	-	Annual APA reports are available at: https://www.irs.gov/businesses/corporations/annual-apa-statutory-reports .
3.	Is training provided to your officials involved in the auditing /examination of taxpayers to ensure that any assessments made by them are in accordance with the provisions of your tax treaties?	Yes	-	See International Practice Units: https://www.irs.gov/businesses/corporations/international-practice-units . See also Internal Revenue Manual on: https://www.irs.gov/irm/part4/ See especially sections “IRM 4.60: International Procedures” and “IRM 4.61: International Program Audit Guidelines.” See also IRS FOIA Library: https://www.irs.gov/privacy-disclosure/foia-library
4.	Is other information available on preventing tax treaty-related disputes?	Yes	-	See generally Rev. Proc. 2015-40: https://www.irs.gov/pub/irs-drop/rp-15-40.pdf See also U.S. Treasury webpage on U.S. tax treaties: https://home.treasury.gov/policy-issues/tax-policy/treaties .

Notes:

1. 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”. (see definition of APA in the *OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations* (“Transfer Pricing Guidelines”)).
2. Situations may arise in which the issues resolved through an APA are relevant with respect to previous filed tax years not included within the original scope of the APA. The concept of “roll-back” is further elaborated in paragraph 4.136 of Section F (Advance pricing arrangement) of Chapter IV of the Transfer Pricing Guidelines and in paragraph 69 of Section D.4.2 (Possible retrospective application (“Roll back”)) of the Annex to Chapter IV (Guidelines for Conducting Advance Pricing Arrangements under the Mutual Agreement Procedure (“MAP APAs”)) of the Transfer Pricing Guidelines. Simply put, the “roll-back” of the APA is understood to mean that the outcome of the APA is applied to previous filed tax years not included within the original scope of the APA.

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B. Availability and Access to MAP				
5.	Are transfer pricing cases covered within the scope of MAP?	Yes	-	See section 2 of Rev. Proc. 2015-40: https://www.irs.gov/pub/irs-drop/rp-15-40.pdf
6.	Are issues relating to the application of treaty anti-abuse provision covered within the scope of MAP?	Yes	-	See generally Rev. Proc. 2015-40, section 2: https://www.irs.gov/pub/irs-drop/rp-15-40.pdf
7.	Are issues relating to the application of domestic anti-abuse provision covered within the scope of MAP?	Yes	-	See generally Rev. Proc. 2015-40, section 2: https://www.irs.gov/pub/irs-drop/rp-15-40.pdf
8.	Are issues where there is already an audit settlement between the tax authority and the taxpayer covered within the scope of MAP?	Yes	-	See Rev. Proc. 2015-40, section 6: https://www.irs.gov/pub/irs-drop/rp-15-40.pdf .
9.	Are double taxation cases resulting from bona fide taxpayer initiated foreign adjustments covered within the scope of MAP?	Yes	-	See Rev. Proc. 2015-40, section 2: https://www.irs.gov/pub/irs-drop/rp-15-40.pdf
10.	Are there any other treaty related issues not covered under s/n 5 to 9 which are not within the scope of MAP?	No	-	-
11.	Are taxpayers allowed to request MAP assistance in cases where the taxpayer has sought to resolve the issue under dispute via the judicial and administrative remedies provided by the	Yes	-	See Rev. Proc. 2015-40, section 6: https://www.irs.gov/pub/irs-drop/rp-15-40.pdf .

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	domestic law of your jurisdiction?			
12.	Are taxpayers allowed to request for MAP assistance in cases where the issue under dispute has already been decided via the judicial and administrative remedies provided by the domestic law of your jurisdiction?	Yes	-	See Rev. Proc. 2015-40, section 6: https://www.irs.gov/pub/irs-drop/rp-15-40.pdf .
13.	Are rules, guidelines and procedures on how taxpayers can access and use MAP, including the specific information and documentation that should be submitted in a taxpayer's request for MAP assistance, publicly available?	Yes	-	<p>Competent Authority Requests: Competent authority requests must follow the instructions and guidance set forth Rev. Proc. 2015-40, section 3 and the Appendix: https://www.irs.gov/pub/irs-drop/rp-15-40.pdf.</p> <p>APA Requests: APA requests must follow the instructions and guidance set forth in Rev. Proc. 2015-41, section 3 and the Appendix: https://www.irs.gov/pub/irs-drop/rp-15-41.pdf.</p>
14.	Are there specific timelines for the filing of a MAP request?	Yes	The availability of the specific timeline is dependent on whether the relevant treaty has a notification period.	See sections 3.04 and 12 of Rev. Proc. 2015-40: https://www.irs.gov/pub/irs-drop/rp-15-40.pdf .
15.	Are guidance on multilateral MAPs publicly available?	No	Requests for multilateral MAPs can be submitted under the same procedures as requests for bilateral MAPs.	See Rev. Proc. 2015-40, section 2: https://www.irs.gov/pub/irs-drop/rp-15-40.pdf .
16.	Are tax collection procedures suspended during the period a MAP case is pending?	Yes	-	See Rev. Proc. 2015-40, section 6: https://www.irs.gov/pub/irs-drop/rp-15-40.pdf .

United States Dispute Resolution Profile – Availability and Access to MAP

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17.	Are there any fees charged to taxpayers for a MAP request?	No	User fees are not collected for MAP requests, but user fees are collected for discretionary determinations of limitations on benefits, per Rev. Prov. 2015-40, section 3.	See Rev. Proc. 2015-40, section 3: https://www.irs.gov/pub/irs-drop/rp-15-40.pdf .
18.	Is there any other information available on availability and access to MAP?	Yes	-	See IRS webpage on APMA: https://www.irs.gov/businesses/corporations/apma .

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C. Resolution of MAP Cases				
19.	Are there any model timeframes for the steps taken by your competent authority from the receipt of a MAP case to the resolution of the case provided to taxpayers?	Yes	-	-
20.	Are statistics relating to the time taken to resolve MAP cases publicly available?	Yes	-	See IRS Large Business & International (LB&I) Division competent authority statistics: https://www.irs.gov/businesses/corporations/annual-competent-authority-statistics
21.	Is interest or penalties resulting from adjustments made pursuant to a MAP agreement waived or dealt with as part of the MAP procedure?	Yes	The U.S. competent authority will consider requests for assistance with respect to any issue it is authorized to resolve under the applicable U.S. tax treaty.	See Rev. Proc. 2015-40, section 2: https://www.irs.gov/pub/irs-drop/rp-15-40.pdf .
22.	Are the roles and responsibility of the MAP office publicly available, for example, is the mission statement of the MAP office available in the <i>annual</i> report of the organisation?	Yes	-	See Rev. Proc. 2015-40, section 2: https://www.irs.gov/pub/irs-drop/rp-15-40.pdf

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23.	<p>Is MAP arbitration a mechanism currently available for the resolution of tax treaty related disputes in any of your tax treaties?</p> <p>If not:</p>	Yes	<p>MAP arbitration is available under several, but not all, U.S. tax treaties. Taxpayers should consult the MAP article under the applicable U.S. tax treaty to determine whether it is an arbitration treaty and the extent to which mandatory arbitration applies under such treaty.</p>	<p>U.S. tax treaties that include MAP arbitration are identified at the following website: https://www.irs.gov/businesses/international-businesses/mandatory-tax-treaty-arbitration</p> <p>General procedural issues associated with mandatory arbitration undertaken as part of the competent authority process are set forth in Rev. Proc. 2015-40, section 10, available at: https://www.irs.gov/pub/irs-drop/rp-15-40.pdf</p>
a.	<p>Are there any legal limitations in your domestic law (for example in your constitution) to include MAP arbitration in your tax treaties?</p>	-	-	-
b.	<p>Does your treaty policy allow you to include MAP arbitration in your tax treaties?</p>	-	-	-
24.	<p>Is the explanation of the relationship between the MAP and domestic law administrative and judicial remedies publicly available?</p> <p>If yes:</p>	Yes	-	<p>See Rev. Proc. 2015-40, section 6: https://www.irs.gov/pub/irs-drop/rp-15-40.pdf</p>

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a.	Does the guidance specifically address whether the competent authority considers that it is legally bound to follow a domestic court decision in the MAP or will not deviate from a domestic court decision as a matter of administrative policy or practice?	Yes	A taxpayer may file a competent authority request with respect to a U.S. federal court's final determination of its tax liability, but only for the purpose of seeking correlative relief from a foreign competent authority. Such final determinations include litigation settlements with the IRS Office of Chief Counsel or the U.S. Department of Justice.	See Rev. Proc. 2015-40, section 6: https://www.irs.gov/pub/irs-drop/rp-15-40.pdf
25.	Are taxpayers allowed to request for multi-year resolution through the MAP of recurring issues with respect to filed tax years?	Yes	Taxpayers may request multi-year resolutions within MAP or file a request for an APA (including with a roll-back).	See Rev. Proc. 2015-40, section 4: https://www.irs.gov/pub/irs-drop/rp-15-40.pdf See Rev. Proc. 2015-41, section 5: https://www.irs.gov/pub/irs-drop/rp-15-41.pdf
26.	Do all your jurisdiction's tax treaties contain a provision which would oblige your jurisdiction to make corresponding adjustments or to grant access to the MAP with respect to the economic double taxation that may otherwise result from a primary transfer pricing adjustment (i.e. is paragraph 2 of Article 9 of the OECD Model Tax Convention or the UN Model Double Taxation Convention included in all of your jurisdiction's tax treaties)?	Yes	The current version and prior versions of the U.S. Model Tax Convention have had such a provision. Some older U.S. tax treaties do not have such a provision, but modern U.S. tax treaties with major treaty partners contain such a provision.	See also U.S. Treasury webpage on U.S. tax treaties: https://home.treasury.gov/policy-issues/tax-policy/treaties .

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27.	Is there any other information available on resolution of MAP cases?	Yes	-	See IRS Large Business & International (LB&I) Division competent authority statistics: https://www.irs.gov/businesses/corporations/annual-competent-authority-statistics

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D. Implementation of MAP Agreements				
28.	Where the agreement reached by your competent authority through the MAP process leads to additional tax to be paid by your taxpayer, is there publicly available information on the timeframe the taxpayer could expect its tax position to be amended to reflect the agreement reached by the competent authority and/or for the additional tax to be paid?	No	-	See Internal Revenue Manual, section 4.60 International Procedures: https://www.irs.gov/irm/part4/ .
29.	Where the agreement reached by your competent authority through the MAP process leads to a refund of the tax due or paid by your taxpayer, are there publicly available information on the timeframe the taxpayer could expect its tax position to be amended to reflect the agreement reached by the competent authority and/or for a refund of the tax paid?	No	-	-
30.	Are all mutual agreements reached through MAP implemented notwithstanding any time limits in your domestic law?	Yes	Except where the treaty does not specifically provide for this.	See Rev. Proc. 2015-41, section 12: https://www.irs.gov/pub/irs-drop/rp-15-41.pdf .
31.	Is there any other information available on the implementation of MAP agreements?	No	-	-