

EU Joint Transfer Pricing Forum releases reports containing 2018 statistics on APAs and pending MAPs under the Arbitration Convention

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Executive summary

In July 2019, the European Union (EU)'s Joint Transfer Pricing Forum (JTPF) released two reports containing [Statistics on Advance Pricing Agreements \(APAs\) in the EU at the end of 2018](#) (Statistics on APAs) and [Statistics on Pending Mutual Agreement Procedures \(MAPs\) under the Arbitration Convention at the end of 2018](#) (Statistics on pending MAPs).¹

The Statistics on APAs provides an overview by Member State on the APA practice in the respective country. The overview shows that not all Member States have a (formal) APA practice yet (i.e., Bulgaria, Cyprus, Estonia and Malta) and more than half of the Member States apply a filing fee for APA requests. When compared to the figures from 2017,² the total number of unilateral APAs in force decreased, whereas the number of bilateral or multilateral APAs in force increased. The total number of APA requests received by the Member States remained similar to 2017, but the number of granted APAs significantly decreased, largely due to a reduction in granted APAs in Belgium.

The Statistics on pending MAPs shows the current state of play with respect to the cases pending under the Arbitration Convention as of the end of 2018. The total number of pending cases remained relatively similar, with an almost equal amount of cases initiated and completed during 2018. Compared to

the 2017 statistics, the number of MAP cases initiated and completed both increased significantly. Approximately half of the almost 2,000 cases were pending for more than two years in 2018. In general, the average cycle time of cases is comparable to 2017.³

Detailed discussion

Background

The JTPF works within the framework of the Organisation for Economic Co-operation and Development (OECD) Transfer Pricing Guidelines and operates on the basis of consensus to propose to the European Commission pragmatic, non-legislative solutions to practical problems posed by transfer pricing practices in the EU. The two reports released in July 2019, the Statistics on APAs and the Statistics on pending MAPs represent the JTPF's latest publications.

Statistics on APAs

The Statistics on APAs provides details on the types of APA options that are available in a Member State, whether there is a filing fee for an APA request, and the number of (unilateral, bilateral, multilateral and total) APAs in force at the end of 2018. Also, the number of APA requests received, APAs granted, APA applications rejected and APA applications where the taxpayer withdrew its request in 2018 were disclosed. Lastly, Member States have provided input on the average time in months to negotiate bilateral or multilateral APAs. The report does not provide comments or an analysis of the data.

From the figures, it can be derived that not all Member States within the EU have a (formal) APA practice yet (i.e., Bulgaria, Cyprus, Estonia and Malta), although bilateral APAs might be possible under the competent authority procedure. Almost 75% of the Member States allow for unilateral, bilateral and multilateral APAs. More than half of the Member States apply a filing fee for APA requests, though the fees differ between Member States and between requests for unilateral and bilateral or multilateral APAs. Compared to the statistics published for the end of 2017, the total number of APAs in force decreased from 1,421 to 1,241. This reduction primarily relates to a reduction in unilateral APAs, largely originating from Belgium. The number of bilateral or multilateral APAs increased as compared to 2017, with the most notable difference being the increase in bilateral or multilateral APAs in Italy.

The total number of APA requests in the Member States remained relatively similar in 2018 as compared to 2017. Belgium had the most significant decrease in APA requests. On other hand, Germany, Poland and Spain had relatively large increases in APA requests in 2018.

The reported average time to negotiate bilateral or multilateral APAs differs significantly between Member States, ranging from 17 to 65 months. Interestingly, the average negotiation time is generally higher for EU bilateral or multilateral APAs as compared to non-EU APAs. Whereas for most Member States with a more established APA practice - measured by the number of APAs in force - the average time to negotiate bilateral or multilateral APAs in 2018 remained comparable to 2017, some strong deviations are noticed for other countries.

Statistics on pending MAPs

The figures included in the Statistics on pending MAPs relate to the pending cases as of 1 January 2018, cases initiated and completed during 2018, and consequently the cases pending as of 31 December 2018 under the Arbitration Convention (AC). According to the data, the total number of pending cases remained quite similar, with a relatively equal amount of cases initiated and completed (727 and 634 respectively) during 2018. Compared to the 2017 statistics, these numbers represent an increase in the number of MAP cases initiated and completed of 33% and 26% respectively. This illustrates that taxpayers are increasingly looking at MAPs as an option to resolve controversy, and tax administrations are increasing their capacity and efforts to resolve MAP cases. Overall, the cycle time for cases completed in 2018 is similar to the 2017 data, with average completion times varying from 16 to 50 months.

Furthermore, the Statistics on pending MAPs provides an overview of the number of cases that are pending two years after initiation and the reasons hereof. Under the AC, after two years, in principle the arbitration phase should start by setting up an advisory commission. From this overview, it can be derived that 932 of the total 1,988 cases were pending for more than two years. Two of the defined primary reasons are that: (i) cases were pending before a court, and (ii) the time limit was waived with the taxpayer's agreement. However, a significant number of cases were pending for more than two years for (mainly) unspecified "other reasons." Under the EU Arbitration Directive,⁴ which

entered into force on 1 July 2019, taxpayers should have access to domestic courts to enforce the setting up of the advisory commission after the two-year period.

A total of six cases were rejected from MAP application, four of which were because the cases were not within the scope of the AC and two for other reasons. Almost all cases were initiated within 6 months from the date of AC MAP submission, with only 4 out of the 564 reported cases taking longer than 12 months to initiate.

Implications

Due to the increased focus on transfer pricing by many tax administrations, the importance of APAs and MAPs is expected to increase in the foreseeable future. This is demonstrated, among other reasons, by the significant increase in MAP cases initiated and completed. Taxpayers may (re)consider their transfer pricing controversy strategy as a result hereof and analyze the opportunities available within the EU and by each Member State, such as the use of bilateral and multilateral APAs.

Endnotes

1. For a comparison to 2017, see EY Global Tax Alert, [*EU Joint Transfer Pricing Forum releases Report on a coordinated approach to transfer pricing controls as well as statistics on APAs and pending MAPs under the Arbitration Convention*](#), dated 13 November 2018.
2. [*Statistics on APAs in the EU at the end of 2017*](#).
3. [*Statistics on Pending MAPs under the Arbitration Convention at the end of 2017*](#).
4. See EY Global Tax Alert, [*ECOFIN reaches political agreement on mandatory dispute resolution mechanisms Directive*](#), dated 23 May 2017.

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