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EU JOINT TRANSFER PRICING FORUM

Statistics on APAs in the EU at the End of 2016

Meeting of 8 March 2018

| MS | What types of Advance Pricing Agreement (APA) options are available? | Is there a filing fee for APA requests? | Total Number of APAs in force at the end of 2016 | | Total Number of Bilateral and Multilateral APAs in force at the end of 2016 | | Total Number of Unilateral APAs in force at the end of 2016 | | Number of APA requests received in 2016 | | Number of APAs granted in 2016 | | Number of APA applications rejected in 2016 | | Number of APA applications where the taxpayer withdrew its request in 2016 | | Average time in months to negotiate bi- or multilateral APAs | |
|---------------------------------------|--|---|--|--------|---|--------|---|--------|---|-----------------|--------------------------------|--------|---|--------|--|--------|--|--|
| | | | EU | NON-EU | EU | NON-EU | EU | NON-EU | EU | NON-EU | EU | NON-EU | EU | NON-EU | EU | NON-EU | EU | NON-EU |
| Austria ⁽ⁱ⁾ | Unilateral (Advance rulings); Bilateral; Multilateral | For unilateral yes, for bilateral/multilateral - no | 1 | 1 | 1 | 1 | - | - | | | 1 | 1 | | | | | 46 | 51 |
| Belgium | Unilateral (Advance rulings); Bilateral; Multilateral | No | 655 | 440 | 8 | 6 | 647 | 434 | 465 | 217 | 635 | 433 | - | - | - | - | 29 | 34 |
| Bulgaria | No regulations available at this moment | | | | | | | | | | | | | | | | | |
| Croatia | APAs or advance rulings are available since the middle of 2016 but there are no cases initiated since then | | | | | | | | | | | | | | | | | |
| Cyprus | APAs are not available. Advance rulings on the interpretation/application of the tax laws are available on request | | | | | | | | | | | | | | | | | |
| Czech Republic ⁽ⁱⁱ⁾ | Unilateral (Advance rulings legislation from 1 st of January 2006); Bilateral and Multilateral (possible under MAP) | Yes CZK 10 000 | 45 | 10 | 1 | - | 44 | 10 | 20 ¹⁾ | 2 ¹⁾ | 18 | - | 1 | 4 | 1 | - | - | - |
| Denmark | Bilateral, Multilateral, Advance rulings | Yes Only for Advance Rulings; the filing fee is DKK 300. | 3 | 9 | 3 | 9 | - | - | 1 | 7 | 1 | 4 | 1 | - | - | 1 | 15 | 20 |
| Estonia | No APAs or advance rulings of any kind. Bilateral APAs in principle possible under MAP | | | | | | | | | | | | | | | | | |
| Finland | Advance rulings (unilateral APA), bilateral and multilateral APAs. | Yes (unilateral only) | 23 | 27 | 3 | 2 | 20 | 25 | 26 | 25 | 19 | 25 | - | - | - | - | 61 | 19 |
| France | Unilateral; Bilateral; Multilateral | No | 17 | 34 | 10 | 26 | 7 | 8 | 16 | 10 | 2 | 8 | 5 | 1 | 6 | 1 | 23 | 26 |
| Germany | Bilateral; Multilateral (Unilateral rulings on transfer pricing are only available under exceptional circumstances specified in a 2006 Federal Ministry of Finance circular) | Yes Generally: EUR 20 000 (15 000 for prolongation/10.000 for amendment); Smaller enterprises: EUR 10 000 (7 500/5 000); In case of hardship and specific interest of tax administration in APA: 0 € | 18 | 27 | 18 | 27 | - | - | 37 | 28 | 15 | 29 | 1 | - | 4 | 1 | 39 (average for APAs granted 2016) / 38 (overall average for APAs granted 2014, 2015 and 2016) | 52 (average for APAs granted 2016) / 48 (overall average for APAs granted 2014, 2015 and 2016) |
| Greece | Unilateral, bilateral, multilateral APAs | Yes. Upon filing of the application for preliminary consultation, a duty of EUR 1000 is paid. For filing the APA application the duty amounts to EURO 5000. In case consultations with foreign | 2 | | 1 | | 1 | | 3 | | | | | | | | 18 months | |

| | What types of Advance Pricing Agreement (APA) options are available? | Is there a filing fee for APA requests? | Total Number of APAs in force at the end of 2016 | | Total Number of Bilateral and Multilateral APAs in force at the end of 2016 | | Total Number of Unilateral APAs in force at the end of 2016 | | Number of APA requests received in 2016 | | Number of APAs granted in 2016 | | Number of APA applications rejected in 2016 | | Number of APA applications where the taxpayer withdrew its request in 2016 | | Average time in months to negotiate bi- or multilateral APAs | |
|----------------------------------|---|---|--|------------|---|------------|---|------------|---|------------|--------------------------------|------------|---|-----------|--|-----------|--|----------------------|
| | | | EU | NON-EU | EU | NON-EU | EU | NON-EU | EU | NON-EU | EU | NON-EU | EU | NON-EU | EU | NON-EU | EU | NON-EU |
| Netherlands (iii) (iv) | Unilateral; Bilateral; Multilateral; Advance rulings | No | | | | | | | 221 | | 191 | | 1 | | 43 | | 2 years | 2 years |
| Poland (v) | Unilateral; Bilateral; Multilateral | Yes The filing fee is 1% of the value of a transaction with the following provisions: for domestic unilateral agreement (i.e. involving only domestic related entities) - no less than PLN 5,000 and no more than PLN 50,000; for unilateral agreement concerning foreign entities no less than PLN 20,000 and no more than PLN 100,000; for foreign bilateral or multilateral the fee amounts should be no less than PLN 50,000 and no more than PLN 200,000. Renewal fees are half of the amount of the original filing fee. | 15 | 9 | 4 | 3 | 11 | 6 | 5 | 1 | 3 | 6 | - | - | 1 | - | 20 | 34 |
| Portugal | The Tax Code on CIT (Art. 138) and the Ministerial Order n.º 620-A/2008, 16 July, allow unilateral, bilateral and multilateral APAs | Yes The filing fee is variable according to the taxpayer's turnover. The minimum fee is EUR 3 152,40 and the maximum - EUR 34 915,85. Renewal fees are 50 % of the amounts of the original fees. | 5 | 1 | 1 | | 4 | 1 | 8 | 2 | | | | | | | | |
| Romania | Unilateral; Bilateral; Multilateral | Unilateral; Bilateral; Multilateral; The filing fees are: large taxpayers 20.000 Euro 15.000 Euro for the modification of the APA in force - other types of taxpayers (small, medium size taxpayers) 10.000 Euro 6.000 Euro for the modification of the APA in force | 5 | 3 | - | 3 | 5 | 3 | 15 | 2 | 1 | - | - | - | - | - | 18 months in average | 18 months in average |
| Slovenia | No APAs or advance rulings of any kind | | | | | | | | | | | | | | | | | |
| Slovak Republic | Unilateral, bilateral, multilateral APAs. | Yes. In case of unilateral APA it is 10 000 EUR. In case of bilateral/multilateral it is 30 000 EUR | 1 | | | | 1 | | 5 | 2 | 5 | 2 | | | | | | |
| Spain | Unilateral; Bilateral; Multilateral | No | 39 | 14 | 9 | 1 | 30 | 13 | 48 | 6 | 13 | 3 | | | 1 | 3 | 30 | 34 |
| Sweden | APA legislation from 1 January 2010. Only bilateral or multilateral APAs. | Yes 150,000 SEK per country (Prolongation fee 100,000-125,000 SEK) | 3 | 5 | 3 | 5 | - | - | 9 | 3 | 3 | 5 | - | - | 1 | - | 37 | 30 |
| UK (vi),(vii),(viii) | Unilateral; Bilateral | No | 21 | 80 | 21 | 36 | - | 44 | 7 | 30 | 4 | 13 | - | 2 | 1 | 10 | 26 | 25 |
| Total | | | 1539 | 723 | 89 | 123 | 1450 | 603 | 1002 | 382 | 1032 | 555 | 41 | 11 | 91 | 25 | | |

Explanatory notes:

AT: Data not available for columns 7/8/11/12/13/14

CZ: some of the requests cannot be broken down to 2 columns exactly because, for example, one request covers more transactions both with EU and non-EU. Those requests are counted as non-EU only.

NL Columns 1-6 not administered; Columns 8, 10, 12, and 14: Split EU and non-EU not administered.

PL: In Poland it is possible to grant an unilateral APA which covers a transaction consisted of several identical transactions with several related entities in different countries (for example service centre in Poland). To issue a single APA instead of many, such transactions should be identical in kind and share the merits, facts and circumstances (one of the features is for example identical wording of the contracts). The reason is not to multiply fees and APA decisions for the minor – in terms of value – identical transactions conducted with many related entities (if treated separately such transactions will not be the subject of APA examination because of the value/fee ratio). In 2016 two such unilateral APAs were granted. In both transactions several EU and non-EU countries were involved. For the purpose of JTPF statistics those APAs were identified as granted for non-EU countries only, to prohibit the multiplication of the records.

UK: columns 1 and 2: The UK does not record all data in the same format as has been requested by the EUJTPF. Given the need to adjust that internal data, variations may exist; UK: columns 6,8,10 and 14: The nature and complexity of some unilateral APAs means the UK does not record central data on how each covered transaction is split across EU and non EU states. In line with previous years the data has been allocated to non-EU; columns 15 and 16: This data is for the APAs granted in the year

Guidance for the completion of the APA questionnaire

The questionnaire aims to collect information about APAs for companies and PEs.

The reference year for this document is 2016 (situation prevailing at the end of 2016).

Most of the columns are broken down into APAs between EU MS and non-EU countries.

The terms used in the table should be understood as follows:

"APA in force": an APA is considered as "in force" when it was granted before the end of the reference year (e.g. 2016) and the agreement's term covers the reference year. Therefore, an APA granted during the reference year (N year) but starting in N+1 year is not counted as "in force at the end of the reference period". The figure in the column "total number of APAs in force" should be the result of adding the following two columns: bi- and multilateral APAs in force and unilateral APAs in force.

Counting of APAs: If an APA covers transactions with more than one company of the MNE in the respective MS (e.g. Subsidiaries A and B in MS X each having transactions with parent company P in State Y covered by the APA), each APA should be counted (here 2 APAs in MS X).

Counting of multilateral APAs: A multilateral APA should be considered as several bilateral APAs and should also be counted that way for statistical purposes, i.e. a multilateral APA signed by member State A, member State B and member State C is counted, from the perspective of State A, as a bilateral APA between A and B, a bilateral APA between A and C and therefore as two APAs. Likewise, a request for such a multilateral APA is counted as two requests.

"Requests received": an APA request should be counted as received in the year the formal written APA request was filed. The term "APA request" has a meaning in line with section 4.52 and 4.53 of the EU JTPF APA Guidelines, i.e. a formal application supplemented with appropriate information. Pre-filing requests are therefore not considered.

"APA granted": an APA is considered as granted

- when the Competent Authority(ies) has (have) formally agreed to the APA, whatever form this formal agreement takes (exchange of letters, signature of the agreement, ...) and
- all the subsequent formal proceedings that may be required are fulfilled (e.g. a formal agreement by the taxpayer or an advance ruling granted to the taxpayer).

That is, if a bilateral APA was signed by the Competent Authorities in year N and e.g. the implementing domestic advance ruling or the taxpayer's agreement was only granted in N + 1, the APA is counted as granted in N +1².

2) Mismatches may result both from different member States' approaches (e.g. one MS' reference date is that of the closing letter and for the other MS, it is that of the taxpayer's agreement) and also from the internal implementation in a different year of the proposed approach. Although these discrepancies are considered as tolerable for the purpose of these statistics, CAs may want to avoid them by informing each other about subsequent proceedings and agree on the date they consider the APA as finally granted.

"APA applications rejected": an APA is considered as rejected when an APA application is not accepted by the tax administration or negotiations to reach a bilateral or multilateral APA failed and therefore no APA was granted.

"Average time in months to negotiate the APAs": this column indicates on average the period between the time an APA request was received and the formal agreement of the APA. Unilateral APAs are excluded from the calculations.