



Advance pricing arrangements

An overview of advance pricing arrangements (APAs) and specific information for taxpayers.

Last updated 22 July 2024

Advance pricing arrangement (APA) program



APA and MAP program management unit



PS LA 2015/4 Advance Pricing Arrangements



Comparison between audit and APA features



Types of APAs



Mutual expectations



Early engagement stage



An overview of the process for the early engagement stage of an APA.

Application stage



Documents to support your APA application



What you need to include in documentation connected to your APA application.

Processing an APA application



Monitoring and compliance stage



APA and MAP statistics



QC 43088

Advance pricing arrangement (APA) program

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The advance pricing arrangement (APA) program is an important part of our compliance assurance strategy, that:

- provides the opportunity for you to reach an agreement with us on the future application of the arm's length principle to your dealings with international related parties
- provides a mechanism for managing and mitigating your transfer pricing risk by providing you with greater certainty on a prospective basis
- fosters a constructive working relationship built on mutual trust which is established through early engagement and full and frank disclosure throughout the negotiation of the APA
- reduces the potential for double taxation on your covered cross-border dealings.

The operation of the APA may depend on you complying with requirements and meeting certain critical assumptions. If done, we are administratively bound by the terms of the APA. Therefore, we will not impose additional income tax to that payable, based on the pricing worked out under the APA on the covered cross-border dealings.

The APA generally covers a period of 3 to 5 years. It may be reviewed if trading circumstances materially change. APAs are also subject to an annual reporting requirement.

When an APA is appropriate

If you have cross-border dealings and you need assurance that those dealings comply with the arm's length principle, you may seek an APA. The dealings must be between:

- related or unrelated separate legal entities (including permanent establishments of separate legal entities)
- a permanent establishment and its head office
- two permanent establishments of the same entity.

For legal guidance, see our:

- **Law Administration Practice Statement PS LA 2015/4 *Advance Pricing Arrangements***

- Taxation Ruling TR 97/20 *Income tax: arm's length transfer pricing methodologies for international dealings*.

QC 43088

APA and MAP program management unit

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The APA / MAP program management unit (PMU) manages our advance pricing arrangements (APA) and mutual agreement procedure (MAP) programs. It also oversees the competent authority (CA) network.

The functions of the PMU include:

- managing the APA workflow and process, including negotiating bilateral advanced pricing arrangements
- providing assistance under the MAP article contained in Australia's tax treaties
- issuing competent authority determinations under the 'limitation of benefits' and recognised stock exchange rules where they exist in relevant tax treaties
- negotiating dual residency mutual agreements for non-individuals under Article 4(1) of the **Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting** (the MLI) where that Article applies to a tax treaty.

You can enquire about applying for an APA, MAP or CA determination with the PMU. You can make your initial contact with the PMU by:

- email to internationalsgatekeeper@ato.gov.au
- completing a **Request for advance pricing arrangement early engagement** (NAT 75220) form
- contacting your existing Relationship Manager
- in writing to

**APA / MAP Program Management Unit
Public Groups and International
Australian Taxation Office
GPO Box 9977
Brisbane QLD 4001**

When you lodge an APA early engagement form or apply for MAP relief, we will advise you of the team and competent authority who will be working on your case.

QC 43088

PS LA 2015/4 Advance Pricing Arrangements

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Law Administration Practice Statement PS LA 2015/4 *Advance Pricing Arrangements* provides detailed guidance on advance pricing arrangements. It also contains a diagrammatic overview of the process for entering into an APA.

PS LA 2015/4 draws upon lessons from the successful implementation of the early engagement approaches used for the processing of private ruling applications.

It reflects a:

- principle-based approach
- streamlined process and practices to improve timelines
- reduction in red tape.

If you wish to enter into an APA, familiarise yourself with PS LA 2015/4.

QC 43088

Comparison between audit and APA features

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Practice Statement Law Administration PS LA 2015/4 *Advance Pricing Arrangements* was released on 23 July 2015, replacing PS LA 2011/1.

The key changes include:

- delivery of a more balanced approach understanding the totality of the cross-border dealings
- a differentiated and more tailored approach to suit the taxpayer's circumstances
- deliberate 'early engagement' stage with a more rigorous approach if necessary
- greater focus on identifying and appropriately considering collateral issues.

Paragraph 16 of PS LA 2015/4 explains the interactions between APAs and ATO audits. An APA does not preclude a taxpayer from an audit of its business overall.

We treat audits and APAs separately, unless your facts and circumstances are sufficiently alike to enable the methodology used in the APA to be applied to the income years under audit.

However, we will not undertake an audit in relation to cross-border dealings which are the subject of an APA. (That is aside from the annual compliance review process required under an APA.) This is unless we have reason to believe that you have omitted or provided incorrect information that is material and relevant.

We prepared the following table in response to questions from tax agents. It highlights the differences between the key features of an audit and an advance pricing arrangement (APA). This will help taxpayers determine the suitability of an APA to their circumstances.

Key features comparison of audits and advance pricing arrangements (APAs)

Feature	Audit	APA
Issues and period covered	<p>Transfer pricing can be the only audit issue or one of many. The time period of the audit is approved by the audit panel and relates to transactions already undertaken.</p> <p>An APA does not preclude you from an audit of your business overall. However, we will not undertake an audit in relation to cross-border dealings which are the subject of an APA unless we have reason to believe that you have omitted or provided incorrect information that is material and relevant.</p>	<p>APAs can cover all international-related party transactions or several types of transactions in a set period of time (that is, the agreed APA period).</p> <p>APAs apply to prospective transactions and the period of time depends on the industry, products or transactions involved.</p>
Process	<p>You and your related entities (if applicable) are profiled and a plan is created.</p> <p>We:</p> <ul style="list-style-type: none"> • consider the risk and issues • consider the application of the multinational anti-avoidance law (MAAL) • will contact you and request information • address the risks 	<p>PS LA 2015/4 sets out the Commissioner's practice and procedures and provides guidance to ATO staff dealing with APA requests.</p> <p>A summary is as follows:</p> <ul style="list-style-type: none"> • a request for APA early engagement form is completed • triage • preliminary discussions with you

- escalate the risks if appropriate
- may consult with subject matter experts
- continue to communicate with you during this process
- determine treatment
- finalise our position
- present our position and discuss it with you
- we will issue our position paper
- communicate the outcomes to you
- prepare amendments or assessments (or both) if applicable.

- request review workshop
- the application of the multinational anti-avoidance law (MAAL), diverted profits tax (DPT) or other collateral issue is considered
- if the workshop agrees for APA to proceed then an invitation to lodge letter is issued
- formal APA application is submitted with supporting documentation
- we update our profiling of you and your entities
- initial ATO position for QA workshop
- if applicable, we will obtain further information and undertake discussions with you
- our position is finalised
- negotiations are conducted
- we will communicate the outcomes to you
- if no agreement is reached, we will withdraw from negotiations
- if agreement is reached the APA document states

		<p>the matters agreed upon</p> <ul style="list-style-type: none"> • as part of the APA terms, an Annual Compliance Report (ACR) is required to be lodged in addition to the tax return.
Benchmark timeframe	<p>We expect to complete an audit within 18 months, assuming we receive your full cooperation.</p>	<p>Benchmark maximum is 6 months for early engagement and 18 months for APA Application plus the ongoing monitoring and compliance through ACRs.</p> <p>However, the timeframe is tailored to meet specific circumstances of the APA. Whether the request is an initial request or a renewal is also a factor.</p>
Global value chain	<p>Profiling and evidence gathering extending to relevant jurisdiction are undertaken to determine your relative contributions to the value chain.</p> <p>Facts gathered including background, organisation structure, behaviour at a global level.</p> <p>This information is used throughout the audit as part of our analysis of the risks identified.</p>	<p>Profiling of similar extent is also completed for APAs.</p>

Functional interviews	<p>Functional interviews (extending to other relevant jurisdiction) are essential for us to gather a detailed understanding of the global value chain, in particular the presence you have in Australia.</p> <p>They also help us understand the functions, assets and risks of relevant parties in related party dealings.</p>	Functional interviews are still conducted for an APA. However, if an APA is relatively simple, they may be streamlined to confirm there are no material changes.
Level of evidence	A high level of evidence is required to complete our statement of audit position (SOAP), for example, the vouching invoices and obtaining source documents.	<p>Evidence is not required to the same level of detail as audits but it will depend on the case. Such information may include: the global value chain, financial statements, transfer pricing documents, intercompany agreements, management accounts and board papers.</p> <p>However, if an APA is withdrawn from the program (either by you or us) and there is a recommendation that it goes to audit the level of evidence required will be increased. We can use the factual information disclosed in the APA process for subsequent audits.</p>
Use of formal powers	We aim for constructive conversations with	The APA process is a cooperative one requiring mutual trust

	<p>you to gather information and reduce the need for formal powers. However, we may send you a formal notice under section 353-10 of Schedule 1 to the <i>Taxation Administration Act 1953</i> (TAA) to gather information in a timely manner or where we have not received your full cooperation. Formal powers may also be used to protect you and third parties.</p>	<p>between the parties to achieve an effective outcome. This requires each party to act transparently. In particular, each party is to disclose all relevant and material facts. Therefore, formal powers are not used in the APA process as the use of them would be inconsistent with the intent of the APA process.</p>
Exchange of Information (EOI)	<p>As above, we try and gather information in a cooperative approach. However, due to the increased focus on international issues we may collect information and documents located offshore by an EOI with other jurisdictions under various arrangements.</p>	<p>It is not our practice to use EOI due to the mutual expectations discussed above about transparency. If relevant information is not provided, we may withdraw from the APA process.</p>
Risk Hypothesis	<p>A risk hypothesis is essential to determine the scope of the audit and identifies the risks to be addressed in the audit. Generally, for transfer pricing audits the risk hypothesis is the pricing does not reflect an arm's length return and it gives rise to a</p>	<p>A risk hypothesis is used to address collateral issues only.</p>

	transfer pricing benefit.	
Justified Trust	<p>An audit may be one part of a tailored assurance approach to achieve justified trust.</p> <p>Four key focus areas are reviewed to achieve justified trust:</p> <ul style="list-style-type: none"> • understanding your tax governance framework • identifying tax risks flagged to the market • understanding significant and new transactions • understanding why the accounting and tax results vary. 	<p>The concept is still embraced in an APA as we need to be comfortable that any material risks are covered and get a holistic understanding of your business operations and financial performance which would include the global value chain.</p>
Behaviour	<p>The audit process is dependent on how you interact with us.</p> <p>Full cooperation will reduce the likelihood of long delays.</p>	<p>Full cooperation and transparency with us reduces the likelihood of large information requests.</p> <p>Both parties must have mutual trust to achieve an effective outcome.</p>
Position Paper	<p>An audit position paper presents our position to you and you are given the opportunity to respond.</p>	<p>A position paper is used (and exchanged) when negotiating bilateral APAs (BAPA) with foreign jurisdictions. It can be used for unilateral APAs (UAPA)</p>

	<p>A statement of audit position (SOAP) is essential for us to communicate our position to you after considering any areas of disagreement raised by you in your response to the audit position paper (if applicable).</p>	<p>depending on the circumstances. A discussion paper may also be used in BAPAs to work through issues.</p>
Settlement	<p>A settlement can occur at any stage of the audit process or during an objection or litigation. Settlement may occur on one issue, multiple issues or all the issues in dispute.</p>	<p>The result of an APA is similar to a settlement. BAPAs are arrived at a mutual agreement under the relevant treaty and UAPAs are agreed by virtue of the general power of administration.</p> <p>However, APAs include ongoing annual compliance reporting (ACRs) requirements to evidence compliance with the APA terms.</p>
Disputes	<p>If you are dissatisfied with a decision, we have a range of dispute resolution strategies to resolve issues as soon as possible:</p> <ul style="list-style-type: none"> • direct contact and negotiation – our preferred way • alternative dispute resolution – cost-effective, informal and quick way using an independent third party 	<p>If you are dissatisfied with a decision and the issue cannot be resolved by both parties, you can seek internal review. The internal review is undertaken by the head of the PMU or another senior officer with no prior involvement in that APA process.</p> <p>If you are still dissatisfied, you can seek a further review by the head of the APA program.</p>

	<ul style="list-style-type: none"> • settlements • independent review – independent senior officer from Review and Dispute Resolution (RDR) • objections – review officer, independent of the original decision-maker • litigation – elect to have the decision reviewed by the Administrative Review Tribunal (ART) or appeal the decision to the Federal Court. 	
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QC 43088

Types of APAs

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There are 3 types of advance pricing arrangements (APAs):

- [Bilateral APA](#)
- [Multilateral APA](#)
- [Unilateral APA](#)

Bilateral APA

A bilateral APA is an arrangement between our competent authority (CA) and the CA of a tax treaty partner country. The Australian CA is a specifically delegated position within the ATO and is authorised to negotiate bilateral APA cases.

The respective CAs enter into an APA under the mutual agreement procedure (MAP) article of the relevant tax treaty.

The CA of each treaty partner country confirms the terms of the APA in writing through a letter or similar document with their resident taxpayer and agrees to be bound by those terms.

A bilateral APA will give a similar assurance to the foreign entity dealing with the tax administration at the other end of the transaction.

Multilateral APA

A multilateral APA is an arrangement between the relevant taxpayers, the ATO CA and the CAs of more than one tax treaty partner and binds all the parties.

Unilateral APA

An APA between the taxpayer and the ATO is referred to as a unilateral APA where the APA does not involve or require agreement with the CA of a tax treaty partner country.

A unilateral APA will provide you with an assurance that we accept the treatment you gave to the covered dealings during the periods of the APA.

Economic double taxation can arise under a unilateral APA where the tax administration of the foreign country forms a different view of the application of the arm's length principle to the cross-border dealings covered by the APA.

If there is a tax treaty between the foreign country and Australia, the Australian CA will seek to support the transfer pricing outcomes of the unilateral APA during CA discussions.

Mutual expectations

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The APA process is a co-operative one requiring a relationship of mutual trust between the parties to achieve an effective outcome.

Expectations we may have of each other include:

- all parties will co-operate fully with each other, including undertaking open and ongoing dialogue in the development of the APA
- each APA request will be treated on its merits according to its own facts
- each party will act transparently by disclosing all relevant and material facts
- each party will provide prompt and complete replies to any reasonable queries.

Any information you provide during the APA process may be provided to the other tax authority where a bilateral or multilateral APA is being sought. You may withdraw from the APA process at any time.


QC 43088


Early engagement stage

An overview of the process for the early engagement stage of an APA.

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Request for early engagement

You can apply for an APA by completing a [Request for advance pricing arrangement early engagement \(PDF, 964KB\)](#)  form.

See [this checklist \(PDF, 1MB\)](#)  of the documentation required to ensure you are prepared for both the early engagement (stage 1) and application (stage 2) phases of your APA.

Your request needs to contain an outline of the APA you propose.

Information you should provide is set out on the request form and includes:

- name and tax residence country of the other parties involved in the proposed APA
- explanation of how the Australian operations fit into the global structure of the group
- global supply and value chain as well as an outline of the roles of the Australian entities within the global value chain
- term of the proposed APA
- description and estimated value of the cross-border dealings to be covered by the proposed APA
- other cross-border dealings not to be covered by the proposed APA
- proposed transfer pricing methodology including applicable profit level indicator (PLI), comparable prices and margins or expected range of results
- collateral issues – including multinational anti-avoidance law (MAAL), diverted profits tax (DPT), hybrid mismatch rules etc
- critical dates.

You may consider providing additional information with your request which may include:

- global group structure
- operational structure to show supply chain of the cross-border dealings to be covered in the proposed APA
- role of Australian entity in the multinational entity (MNE), reflecting any recent or anticipated restructure to the economic group
- transfer pricing documentation prepared contemporaneously
- financial statements

- working papers to support your International Dealings Schedule's disclosure
- outline the key channels to market and types of customers
- self-assessment of the risk-zone of the transfer pricing arrangements where they meet the criteria of the Practical Compliance Guidelines (PCGs) listed below
 - *PCG 2017/1 ATO compliance approach to transfer pricing issues related to centralised operating models involving procurement, marketing, sales and distribution functions*
 - *PCG 2017/4 ATO compliance approach to taxation issues associated with cross-border related party financing arrangements and related transactions*
 - *PCG 2019/1 Transfer pricing issues related to inbound distribution arrangements*
- any other relevant information.

During the early engagement stage, we will work with you to develop a plan for the early engagement stage and a draft plan for the APA application stage.

Triage

When the Internationals Gatekeeper receives the completed request for early engagement, the APA request will be assigned to an APA team. If necessary, an officer from the APA team will contact you to confirm our understanding of the proposed APA.

The request is reviewed at triage and at the APA request review workshop. At both workshops, a decision is made whether to progress the APA request.

If we decide not to progress your APA request, we will advise you in writing of the reasons for that decision.

If you are not satisfied, you can make further submissions to the APA team leader. If the APA request is still not accepted, you may submit a request for an internal review of the decision to the Internationals Gatekeeper.

This review is undertaken by the head of the APA / MAP Program Management Unit or another senior officer with no prior involvement in your APA request.

Preliminary discussions

Preliminary discussions are held as part of the cooperative relationship that underlies our entering into an APA. The aim of these discussions is to explore avenues for the appropriate treatment of the covered cross-border dealings and any collateral issues.

Openly discussing your APA request should stimulate a free flow of information between us and lead to a more robust review of the request and any supporting documentation.

Further information about preliminary discussions from our perspective is available in *PS LA 2015/4 Advance Pricing Arrangements*.

At the end of these discussions, we will know what to expect if you lodge a formal APA application.

QC 43088

Application stage

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We do not prescribe any set format or method of presentation of your formal APA application. Rather we will discuss and agree what information documentation is required as part of the APA case plan that we develop and agree to during early engagement. We will only require you to provide information that is material and relevant to the analysis and evaluation of the APA proposal.

What we need to ascertain

When preparing your formal APA application, the level of documentation must allow us to ascertain:

- the actual conditions relevant to the cross-border dealings which are the subject of the proposed APA
- the arm's length conditions relevant to the cross-border dealings
- the particulars of the method used and comparable circumstances relevant to identifying those arm's length conditions
- the expected result of the application of the proposed method
- factors and assumptions so significant that, in an arm's length situation, the parties would not continue to be bound by the agreement if they changed (critical assumptions)
- further information and documentation as agreed to in the early engagement stage or that may be of assistance to progress your APA application.

In the case of a bilateral APA, you should also advise us of the information or documentation requests made by the tax treaty partners in about the APA application and ensure that we are provided with copies of any information or documentation supplied by the foreign entity or their affiliates to the tax treaty partners.

We may request an English translation of any documents you provide in a foreign language.

Your formal APA application should be lodged with the International Gatekeeper within the timeframe agreed to at the early engagement meetings or as set out in the agreed APA case plans) (or both).

Subsequent communication regarding your APA should be with the APA team handling the case. In the case of any dispute arising in the APA process, refer to paragraph 11AE of PS LA 2015/4 *Advance Pricing Arrangements*.


See [Documents to support your APA application](#).

QC 43088

Documents to support your APA application

What you need to include in documentation connected to your APA application.

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See [this checklist \(PDF, 1MB\)](#)  for a summary of the documentation required to ensure you are prepared for both the early engagement (stage 1) and application (stage 2) phases of your APA.

Continue reading below for a more comprehensive guide on what should be included in this documentation.

If there are a lot of records or documents to support your formal APA application, we may agree that some or all of these need not be provided with the application. Such documents should be referenced in the APA application and made available if requested.

a) Actual conditions

- The multinational entity (MNE) and company group of which you are a member, including details of the ownership and organisational structure and geographical locations.
- The global value chain of the MNE including identification of the important drivers of business profits and your contribution to that global value chain.
- In the case of the bilateral or multilateral APA, the countries of residence of the other parties and the countries in which they conduct business.
- A description of the size, nature or characterisation and value of the covered cross-border dealings.
- A list and brief description of important international agreements between members of the MNE group.
- A description of the actual economic activity occurring between members of the MNE group.
- Where the form of the cross-border dealings differs from their actual economic activity, an explanation of why you consider this to be the case.
- A description of the industry and the main geographic markets in which you operate.

- An explanation of your position in the industry, including a list of major competitors.
- A functional analysis describing the principal contributions to value creation by individual entities within the group, that is key functions performed, important risks assumed and important assets used.

b) Arm's length conditions

- Proposed sources of comparable data and the key characteristics or criteria to be met by uncontrolled transactions in order to be regarded as potentially comparable.
- A description of the proposed comparables and an analysis of the key comparability factors between the comparables and your entity.
- Details and calculations of any proposed adjustments to the comparables results.

c) Proposed transfer pricing method

- A description of the proposed transfer pricing methodologies and the reasons why you consider that method the most appropriate.
- Whether or not you currently use a recognised transfer pricing method to test or set the actual transfer prices of cross-border dealings. If not, what method you use to set your prices.
- Where applicable, a description of the most appropriate profit level indicator and the reasons for its selection.
- Sufficient data to apply the transfer pricing methodology and to demonstrate that the outcome produced is arm's length.
- The proposed arm's length outcome or range which results from the application of the transfer pricing methodology.
- The process by which you propose to make any necessary adjustments to your actual results during the APA (compensating adjustments) and the reasons for your choice of process.

d) Expected results

- Likely or forecast outcomes from the proposed methodology (including sensitivity analysis indicating factors that impact profitability and how sensitive profitability is to changes in those factors) during the term of the APA.

e) Critical assumptions

- The APA application should define any factors or assumptions that are so significant that if they were to change in specified ways, the appropriateness of the terms of the proposed APA, or the basis upon which it was agreed, would be challenged and neither party in an arm's length situation would continue to be bound by the terms of the APA.

f) Other information

- Information or documentation (or both) as agreed in the early engagement stage.
- The tax and financial position of all parties involved in the APA, or at the aggregate tax jurisdiction wide level, for the last 3 years, including
 - earnings
 - profit (loss) before income tax
 - tangible assets other than cash and cash equivalents
 - number of employees
 - any other relevant data.
- Information on forecast or budgeted financial position during the APA period for all parties involved in the APA.
- Any other information that may be of assistance in progressing your APA application.

Processing an APA application

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As part of critically analysing and evaluating your APA application and any supporting information and documents you have provided, the APA team may ask you about particular aspects of the APA application.

We may request you to provide explanation or further information or may seek to interview some of your key commercial staff. If our analysis and evaluation results in a different functional analysis conclusion to the one you describe in your APA application, we will discuss this with you with a view to reaching agreement.

In the case of a bilateral or multilateral APA, the Australian CA will undertake any negotiation with the competent authority (CA) of the other tax treaty partners. Although you are not a party to these negotiations, in limited circumstances you may be requested to make a presentation on factual matters where both CAs agree that clarification of the fact pattern will enhance their level of understanding.

The APA document

For a unilateral APA, the form of the APA will normally be a document setting out the terms of the arrangement which is signed by both parties.

For a bilateral or multilateral APA, when an agreed arrangement is reached by the CAs you will be given the opportunity to accept or reject that arrangement. Where you accept the APA negotiated and agreed between the CAs, you and the ATO will enter into a separate arrangement.

The form of this arrangement could include any of the following:

- a written agreement based on the terms of the APA agreed between the CAs signed by you and the Australian CA
- a signed statement that you will abide by the terms of the arrangement negotiated by the CAs
- some other documentation demonstrating your consent to abide by the terms of the APA agreed by the CAs.

If you reject the arrangement negotiated and agreed between CAs, then the bilateral or multilateral APA will not proceed. You may wish to discuss with the APA team the options where you reject an agreement negotiated by the CAs. Options in this regard may include you agreeing to conclude the matter as a unilateral APA.

QC 43088

Monitoring and compliance stage

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Annual Compliance Report

As part of the APA terms, you will be required to prepare and provide us with an Annual Compliance Report (ACR) for each year of the APA. The ACR is separate from any requirement you have to lodge your tax return.

Your ACR should include:

- an analysis of your compliance with the APA including the information and calculations demonstrating the outcome of the application of arm's length methodology
- details of any compensating adjustments made and how each was affected in the tax return
- whether there has been a breach of any critical assumptions.

The ACR must contain sufficient information to detail your actual results for the year and to demonstrate your compliance with the terms of the APA. We will tailor the specific requirements to be included in your ACR during the APA process.

At the time of lodging your tax return for an income year, or such other time specified, you send the ACR for the same income year to the InternationalsGatekeeper@ato.gov.au. In a bilateral APA, a similar reporting product may be required by the other tax treaty partner in respect of the other party to the APA. In some instances, the ACR requirements of each jurisdiction may be specified in the bilateral agreement.

We will review your ACR on the basis of your audited financial statements. We may require you to provide further information to verify that you have complied with the terms of the APA. Your public officer should make the following declaration:

I declare that I have examined the information contained in this APA Annual Compliance Report, including accompanying documents, and to the best of my knowledge and belief, the facts presented within this report and accompanying documents are true, comprehensive and accurate.

Where we are satisfied that you have complied with the terms of the APA, we will provide you with written advice to this effect. We will only contact you where it is necessary to clarify the contents of the ACR or to request further information. In the case of a bilateral APA, the tax treaty partner may also review their equivalent ACR. If they raise any issues, the Australian CA may then need to seek additional information from you.

If you provide the information above, you will be considered to have satisfied the requirements of subdivision 284-E of Schedule 1 to the *Taxation Administration Act 1953*.

The terms of an APA will generally state that the APA may be revised, modified, suspended or cancelled if:

- you fail to provide an ACR
- you fail to provide additional information requested within a reasonable time
- your records do not enable us to confirm readily that the transfer pricing methodology was applied as required by the terms of the APA and that critical assumptions were met.

In this case, we would no longer be bound administratively by any undertaking not to conduct active compliance activity relating to the transfer pricing issues covered by the APA. If it is discovered that the ACR was false or misleading, the previous issue of an acknowledgment letter would not prevent us undertaking follow-up action. Some tax treaty partners retain the right to review or audit their corresponding taxpayer on APA covered dealings at any time.

If we cancel your APA because of non-compliance with its terms, you will be considered to have satisfied the requirements of subdivision 284-E up to the point of cancellation of your APA.

APA record keeping

You must retain all records relied upon in concluding the APA and all supporting data referred to in any ACR or used in applying the APA. The APA may specify the record retention period or specifically provide that certain records need not be retained.

Unless otherwise stated in the APA, you are required to keep all records in respect of the covered dealings in accordance with the record keeping requirements under section 262A of the *Income Tax Assessment Act 1936*.

You do not need to create or retain any records in addition to those mentioned above to satisfy the requirements of subdivision 284-E of Schedule 1 to the *Taxation Administration Act 1953*.

You should make available any records needed for the purpose of monitoring the APA within a reasonable time upon request. If it is found that any of the critical assumptions or conditions (or both) have not been adhered to, or where the records do not enable us to readily confirm that such assumptions and conditions have been met, we will consider cancelling the APA for the remaining term.

In the event you apply for an APA but negotiations subsequently breakdown and no APA eventuates, the documentation provided in support of your application through the early engagement and APA application stage may be considered when determining whether you have met the requirements of subdivision 284-E.

Breach of critical assumptions

If there is a breach of a critical assumption, as part of our relationship of mutual trust and consistent with the co-operative nature of the APA, you should tell us immediately.

We will enter into discussions with you to clarify why the breach occurred. If needed, all parties (including the tax treaty partner in a bilateral APA) will enter into discussions to revise, modify, suspend or cancel the APA. Any supporting documentation and any proposed course of action you may suggest (for example, revision of the APA) should be lodged as early as possible.

When looking at a change in circumstances, including general or economic downturn, we would assess whether arm's length parties could reasonably have been expected to foresee or anticipate that

change in circumstances at the time the APA was entered into. If so, we would consider whether the agreed transfer pricing methodology sufficiently took this into account. We would apply the arm's length principle to determine whether any change in critical assumptions is such that arm's length parties would have renegotiated the arrangement due to the change in circumstances.

If the APA is revised or modified, the effective date of the revised or modified APA will be stated in the new APA. The revised or modified APA should also note the date on which the original APA became no longer effective.

If a revised or modified APA cannot be negotiated, the APA will be cancelled. Unless otherwise agreed, the APA will be cancelled as from the date the critical assumption was breached.

If a transactional profit method is the primary methodology that has been used in the APA, the APA will generally be cancelled with effect from the beginning of the income year in which the critical assumption was breached. In such circumstances the methodology generally applies to the dealings that occurred throughout the whole of the income year.

Compensating adjustments

Australia's domestic tax laws will determine the treatment to be afforded to any compensating adjustments or payments for the purpose of calculating taxable income for Australian tax purposes. Generally, you will be requested to suggest an appropriate mechanism that suits the circumstances of your business. The treatment and its tax effect will be discussed and agreed upon during the APA process.

For example, assume you incur a further liability under the agreed APA, after the close of the income year, because your actual results exceeded the top of an agreed range or result. Generally, that further liability will only be allowed as a deduction in the year in which it is incurred even though the adjustment may relate to international related party dealings undertaken in the previous year.

However, that deduction would be allowable for the previous year if the liability under the agreed APA had been incurred prior to the close of that income year and the subsequent adjustment was merely a calculation exercise.

Accounting standard AASB16

The introduction of Australian Accounting Standard Board (AASB) 16 (replacing AASB 117) brought additional transparency to financial statements, changing the accounting treatment of an entity's operating lease activities. AASB 16 is effective from annual reporting periods beginning from 1 January 2019.

Relevant to advance pricing arrangements (APAs), the change primarily results in operating lease expenses no longer being recognised in the income statement (P&L) and instead having an interest and depreciation expense.

Consequently, this may impact profitability measures commonly adopted in APAs, including earnings before interest and tax.

For existing and new APAs impacted by AASB 16, we intend to assess compliance with the APA terms on a 'but for' AASB 16 basis. That is, what is your financial performance, but for the changes from AASB 16 – effectively continuing to adopt AASB 117. At the time of your annual compliance review you will need to disclose:

- your profit level performance, with and without AASB 16 changes, including appropriate documentation.
- a breakdown of all non-deductible items included in your tax reconciliation calculations.

The introduction of AASB 16 may impact comparability studies relied upon, including previous reporting periods. We are continuing to monitor and evaluate the impacts on comparability and the possible remedies. We will work with you to understand the potential impact of AASB 16 changes, where applicable.

Where changes to the accounting standards affect the terms of your existing APA, contact InternationalsGatekeeper@ato.gov.au.

Collateral issues

A collateral issue is an administrative or tax issue in relation to your affairs in addition to the cross-border dealings that are the subject of the APA.

When applying for an APA you need to identify any collateral issues that may impact on the operation of the APA, or that we may need to consider when deciding whether it is appropriate to proceed with an

APA, for example, the possible applicability or otherwise of anti-avoidance rules. Where you or the APA team identify a collateral issues you will need to provide an analysis of the application of the law to that issues.

Collateral issues may need to be considered in conjunction with your APA request. Where possible, collateral issues will be addressed and resolved in parallel with the development of the APA. You may need to work with us to ensure that any collateral issues are appropriately resolved within an agreed timeframe.

You will need to discuss with the APA team at the preliminary discussion step how collateral issues should be addressed. Options for addressing collateral issues may include:

- applying for a private binding ruling, or other interpretive assistance product
- consideration of the issue by tax technical personnel within the ATO
- having a risk assessment product applied to the issue
- obtaining counsel opinion on the issue.

Anti-avoidance provisions as a collateral issue

Consistent with the treatment of other collateral issues, we will consider the possible application of Part IVA of the *Income Tax Assessment Act 1936* or other specific anti-avoidance provisions that may arise in relation to the cross-border dealings to be covered by the proposed APA in conjunction with your APA request. Where you request a private binding ruling in respect of these matters, the APA team leader will work with you to coordinate the ruling request.

If Part IVA or another specific anti-avoidance provision may arise for the cross-border dealings to be covered by an APA, we will consider the transfer pricing issues arising as part of the APA request or application and those anti-avoidance matters concurrently.

Rollback

The APA team leader will consider whether transfer pricing issues in years prior to your proposed APA need to be resolved prior to or as

part of the APA. Resolving transfer pricing issues in years prior to those covered by the APA is a collateral issue.

One method that may be available to resolve such an issue is to apply the transfer pricing methodology developed for the APA to those prior years of income. This is called rollback.

Rollback will be appropriate where there are no material changes to the covered dealings or the conditions that operate between the parties in the rollback period as compared to the APA period. See section 15 of *PS LA 2015/4 Advance Pricing Arrangements* for further information.

Where there is a need to amend a prior year return because of addressing a transfer pricing issue in that year, the amendment will be treated as though you had made a voluntary disclosure.

This is provided that active compliance has not already been commenced, or we have not previously contacted you or your representatives regarding the prior year returns. Where active compliance has not started, additional penalty, if any, will be calculated based on you having made a voluntary disclosure in relation to each prior year. Where active compliance has started, the normal penalty provisions apply to any adjustments made to the years under review.

Renewals

If you wish to renew your APA, you should seek renewal at least 6 months before the expiration of the existing APA to allow time for negotiation and conclusion.

Generally, the renewal of an APA will follow the same procedure as the original APA request. In certain circumstances, however, the time taken to complete the renewal of an APA would be significantly less than an original APA.

For timeframes to be reduced you would have to provide any relevant information requested and demonstrate that:

- you complied with the terms of the existing APA
- the covered dealings are consistent with those in the existing APA
- there are no material changes to functions, assets or risks for the taxpayer or other parties to the covered dealings

- the transfer pricing methodology used in the previous APA remains the most appropriate
- the critical assumptions in the existing APA are still appropriate.

We may require new or updated economic studies and supporting documentation. This decision will be made at the early engagement stage.

Where a renewal involves substantial changes to the terms used in the existing APA then the renewal process will probably have a similar timeframe to an original APA process.

If you have complied with the terms of the existing APA but have not demonstrated your commitment to fostering constructive working relationships and mutual trust with us, for example if your profitability was consistently at the bottom of an agreed range throughout the APA period, this will be taken into consideration when we make the decision whether to progress a renewal request.

QC 43088

APA and MAP statistics

Last updated 27 July 2023

See statistics for our advance pricing arrangements (APA) and mutual agreement procedure (MAP) programs for the last 5 income years:

- [Key APA statistics](#)
- [Key MAP statistics](#)

Key APA statistics for each income year (at 30 June)

APA program inventory

Agreed APAs have steadily decreased from 2019–20, but this is largely offset by a corresponding increase in APAs in progress across the same years. This was primarily driven by the receipt of several bilateral

APA renewal requests following expiry of the prior APA. Program inventory has remained relatively constant since 2018–19.

Table 1: Agreed APAs, 2017–18 to 2021–22

Active APAs (signed and in effect)	2017–18	2018–19	2019–20	2020–21	2021–22
Multilateral	1	1	0	0	1
Bilateral	55	58	58	46	34
Unilateral	54	57	59	55	54
Total	110	116	117	101	89

This data is displayed as a line graph in Figure 1 below.

Figure 1: Agreed APAs, 2017–18 to 2021–22

APAs in progress

The significant differential in unilateral APAs in progress in 2017–18 year was driven by increased demand as a result of multinational anti-avoidance legislation (MAAL) risk reviews.

Table 2: APAs in progress, 2017–18 to 2021–22

APAs in progress	2017–18	2018–19	2019–20	2020–21	2021–22
Multilateral	4	3	2	2	3
Bilateral	46	38	46	51	60
Unilateral	56	36	27	30	27

Total	106	77	75	83	90
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This data is displayed as a line graph in Figure 2 below.

Figure 2: APAs in progress, 2017–18 to 2021–22

APAs completed

Total APAs completed each financial year has been relatively consistent, aside from 2020–21 which was negatively impacted by COVID-19. The decrease in completed APAs is attributable to a combination of factors stemming from COVID-19, including but not limited to:

- clients delaying engagement with us where their business operations were affected by restrictions or measures to safeguard employees' safety
- our treaty partners facing similar challenges, in addition to travel restrictions leading to some delays in bilateral negotiations.

Table 3: APAs completed (new and renewals), 2017–18 to 2021–22

APA	2017–18	2018–19	2019–20	2020–21	2021–22
APA in place	110	116	117	101	89
APAs completed (new)	9	14	11	6	2
APAs completed (renewal)	15	17	16	7	23
Total	24	31	27	13	25

This data is displayed as a bar chart in Figure 3 below.

Figure 3: APAs completed (new and renewals), 2017–18 to 2021–22

Table 4: APAs completed (by type), 2017–18 to 2021–22

APA	2017–18	2018–19	2019–20	2020–21	2021–22
Unilateral	11	17	15	6	8
Bilateral	12	14	12	7	16
Multilateral	1	0	0	0	1
Total	24	31	27	13	25

This data is displayed as a bar chart in Figure 4 below.

Figure 4: APAs completed (by type), 2017–18 to 2021–22

APA average cycle times

For the 3 years from 2018–19 to 2020–21, an upward trend in cycle times for both unilateral and bilateral APAs was emerging. This trend reversed in 2021–22, where the average cycle times decreased. Average cycle time for the completed cases in the 2022 year was approximately 25 months across both unilateral APAs (UAPA) and bilateral BPAs (BAPA).

In 2020–21, the average time to complete bilateral and unilateral APAs was higher than usual due to several cases being ‘placed on hold’ to address collateral issues. With the small number of cases finalised in this particular year, the overall average cycle times were adversely affected. For those instances where complex collateral issues are identified, APA cases will cease while other compliance activity is being undertaken.

In 2021–22, we completed one multilateral APA which involved agreements with four different jurisdictions. The time taken to complete the negotiation was longer than what is generally expected for unilateral and bilateral APAs because of the challenging coordination process.

Table 5: APA average cycle time (months), 2017–18 to 2021–22

APA	2017–18	2018–19	2019–20	2020–21	2021–22
Unilateral	27.79	23.27	28.92	32.92	29.41
Bilateral	35.50	31.67	36.85	50.26	23.55
Multilateral	61.60	61.60	0	0	93.43

This data is displayed as a bar chart in Figure 5 below.

Figure 5: APA average cycle time (months), 2017–18 to 2021–22

Average bilateral APA cycle times at the jurisdictional level are influenced by the size of the APA program inventory with our treaty partner and at times, factors outside the control of the Australian Competent Authority.

Table 6: BAPA average cycle time (months), 2017–18 to 2021–22

Jurisdiction	Average cycle time (months)
Japan	18.3
Switzerland	22.4
New Zealand	24.1
Singapore	25.6
United States	34.0

United Kingdom	41.4
Other treaty partners (de minimis rule applies)	37.0

This data is displayed as a bar chart in Figure 6 below.

Figure 6: BAPA average cycle time (months), 2017–18 to 2021–22

APA requests

Over the last 5 years, there has been an upward trend in bilateral APA requests and a downward trend in unilateral APA requests. In 2021–22, 48 APA requests were received. The primary driver for this increase was a significant number of bilateral APA renewal requests from one treaty partner. This is a deliberate strategy between Australia and our treaty partner to more efficiently conclude APAs, providing earlier certainty and an enhanced client experience. New bilateral APA requests are also trending up. This indicates taxpayers are seeking to not only attain certainty on their pricing arrangements but increasingly, also seeking to mitigate the risk of double taxation.

The root cause for the trend down in unilateral APAs is the number of new unilateral APA requests received in 2017–18 and to a lesser extent, 2018–19. As previously noted, the large number of unilateral APA requests in those years was a result of MAAL risk reviews. New unilateral APA requests have fallen from 2019–20 but not as pronounced as from 2017–18 and are expected to flatten out moving forward.

Excluding 2021–22 bilateral APA renewals, the trend line for both unilateral and bilateral APAs is relatively flat. This indicates consistent year on year demand from taxpayers seeking to renew APAs and is reflective of the value taxpayers see in the APA program.

Table 7: Total APAs received by type, 2017–18 to 2021–22

APA	2017–18	2018–19	2019–20	2020–21	2021–22

Unilateral	22	12	10	12	12
Bilateral	15	12	21	14	33
Multilateral	1	0	0	0	3
Total	38	24	31	26	48

This data is displayed as a bar chart in Figure 7 below.

Figure 7: Total APAs received by type, 2017–18 to 2021–22

Table 8: New APAs received by type, 2017–18 to 2021–22

APA	2017–18	2018–19	2019–20	2020–21	2021–22
Unilateral	11	6	4	3	2
Bilateral	3	6	9	4	5
Multilateral	1	0	0	0	2

This data is displayed as a bar chart in Figure 8 below.

Figure 8: New APAs received by type, 2017–18 to 2021–22

Table 9: Renewal APAs received by type, 2017–18 to 2021–22

APA	2017–18	2018–19	2019–20	2020–21	2021–22
Unilateral	12	6	6	9	10

Bilateral	11	6	12	10	28
Multilateral	0	0	0	0	1

This data is displayed as a bar chart in Figure 9 below.

Figure 9: Renewal APAs received by type, 2017–18 to 2021–22

APAs by industry segment

The industry mix in the APA program over the last 2 years is relatively constant. Consistent with the nature of the Australian economy being an importer of goods and services, the bulk of APAs are in the wholesale, retail and services industry. These taxpayers are predominantly in the Top 1,000 population.

The Top 100 population segment is dominated by taxpayers from the mining, energy and water industry, and the banking, finance & investment, insurance and super funds industry.

Table 10: APAs by industry segment, 2020–21

Industry	2020–21
Banking, finance & investment, insurance, super funds	13
Mining, energy and water	28
Manufacturing construction and agriculture	32
Wholesale, retail and services	109
Other	1
Total	183

This data is displayed by percentage in Figure 10 below.

Figure 10: APAs by industry segment (%), 2020–21

60% wholesale, retail and services; 18% manufacturing, construction and agriculture; 15% mining, energy and water; 7% banking, finance & investment, insurance, super funds.

Table 11: APAs by industry segment, 2021–22

Industry	2021–22
Banking, finance & investment, insurance, super funds	17
Mining, energy and water	22
Manufacturing construction and agriculture	30
Wholesale, retail and services	110
Other	0
Total	179

This data is displayed by percentage in Figure 11 below.

Figure 11: APAs by industry segment (%), 2021–22

61% wholesale, retail and services; 17% manufacturing, construction and agriculture; 12% mining, energy and water; 10% banking, finance & investment, insurance, super funds.

Key MAP statistics for each income year (at 30 June)

Total mutual agreement procedure (MAP) cases continue to trend up from 2018–19. This is from a combination of increasing MAP requests and increasing average cycle times, primarily from our MAP cases with

transfer pricing issues. Other than 2019–20, transfer pricing MAP cases generally make up more than 50% of the MAP program.

The increase in non-transfer pricing cases from 2019–20 is due to an increase in dual residency MAP requests, emanating from the MLI entering into force in Australia from 1 January 2019. Approximately 65% of our total inventory are inbound MAP cases.

As of 30 June 2022, transfer pricing MAP cases make up 59% of program inventory with 75% of the MAP program coming from either transfer pricing or dual residence issues.

Table 12: Active MAP cases, 2017–18 to 2021–22

Type	2017–18	2018–19	2019–20	2020–21	2021–22
Transfer pricing MAP cases	26	15	21	29	36
Non-transfer pricing MAP cases	14	13	25	18	25
Total MAP cases	40	28	46	47	61

This data is displayed as a bar chart in Figure 12 below.

Figure 12: Active MAP cases, 2017–18 to 2021–22

Table 13: MAP case inventory by treaty article, 30 June 2022

Treaty article	2021–22
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Article 9 – Associated enterprises	36
Article 4 – Dual residency	10
Article 7 – Business profits	6
Article 4 – Residency	4
Article 15 –Employment income	2
Article 18 – Pensions	2
Article 20 – Students	1
Total	61

This data is displayed by percentage in Figure 13 below.

Figure 13: MAP case inventory by treaty article, 30 June 2022

Article 9 – associated enterprises 59%, Article 4 – dual residency 16%, Article 7 – business profits 7%, Article 4 – residency 3%, Article 15 – employment income 3%, Article 18 – pensions 2%.

Table 14: New MAP cases, 2017–18 to 2021–22

MAP cases	2017–18	2018–19	2019–20	2020–21	2021–22
Transfer pricing MAP cases	14	5	13	11	10
Non-transfer pricing	9	13	25	22	30

MAP cases					
Total MAP cases	23	18	38	33	40

This data is displayed as a bar chart in Figure 14 below.


Figure 14: New MAP cases, 2017–18 to 2021–22

Table 15: New MAP requests by treaty article, 2021–22

Treaty article type	2021–22
Article 4 – Dual residency	21
Article 9 – Associated enterprises	10
Article 4 – Residency	4
Article 18 – Pensions	3
Article 15 –Employment income	2

This data is displayed by percentage in Figure 15 below.

Figure 15: New MAP requests by treaty article (%), 2021–22

 Article 4 dual residency 52%, Article 9 associated enterprises 25%, Article 4 residency 10%, Article 18 Pensions 8%, and Article 15 Employment income 5%.

Total MAP requests continue to increase annually from 2018–19. This is largely driven by high volumes of dual residency determinations resulting from the MLI requirements. These dual resident cases are mostly with New Zealand and United Kingdom. Transfer pricing MAP requests remain relatively steady.

Similar to MAP program inventory as at the end of the 2021–22 year, 75% of the new requests received relate to transfer pricing or dual residence tax treaty issues. However, unlike the breakup of the MAP program inventory, more than 50% of new MAP requests in the 2022 year relate to dual residence tax treaty issues.

Table 16: Completed MAP cases, 2017–18 to 2021–22

Type of MAP case	2017–18	2018–19	2019–20	2020–21	2021–22
Transfer pricing	6	16	7	3	3
Non-transfer pricing	11	14	13	29	23
Total	17	30	20	32	26

This data is displayed as a bar chart in Figure 16 below.

Figure 16: Completed MAP cases, 2017–18 to 2021–22

MAP average cycle times in months

Our MAP inventory continues to climb as we historically receive more MAP requests in any given year than we close cases. The large number of non-transfer pricing MAP cases closed in the last 2 years are dual residency MAP requests. These are often less complex and thus are determined in a far quicker timeframe than other MAP matters, particularly transfer pricing.

Table 17: MAP average cycles times (months), 2017–18 to 2021–22

Type of MAP	2017–18	2018–19	2019–20	2020–21	2021–22

case					
Transfer pricing	10.59	25.45	32.78	41.79	69.99
Non-transfer pricing	10.59	17.24	15.39	17.79	7.56
Total	10.59	21.62	16.15	11.62	14.76

This data is displayed as a bar chart in Figure 17 below.

Figure 17: MAP average cycle times (months), 2017–18 to 2021–22

MAP 5-year average cycle time

Transfer pricing MAP completions have declined in recent years but of note for the 2021–22 year, a number of MAP cases were agreed in principle with our treaty partners but were not administratively finalised by the end of the financial year. These will be reflected in the 2022–23 completions.

The average cycle time for transfer pricing MAP cases has trended upwards from 2017–18. These cases are generally complex and require greater resource investment and negotiation with our treaty partners. The average cycle time is also adversely affected by some outlier cases.

This is noticeable in 2021, when a 57-month aged case was successfully closed, and in 2022 when our oldest case (173 months) was closed and skewed the average monthly cycle times. Both cases experienced long delays in response times from our treaty partners. We believe the introduction of mandatory binding arbitration into many of our tax treaties via implementation of the MLI will reduce this occurrence moving forward. When we exclude the oldest case closed, we saw that the remaining transfer pricing cases were closed within the OECD recommended 24-month cycle for 2021–22.

Average MAP case cycle times at the jurisdictional level are influenced by a number of factors. Individual cases can skew average cycle times

on small inventory, and some cycle times are impacted by factors outside the control of the Australian Competent Authority.

Table 18: Transfer pricing MAP case 5-year average cycle time

Treaty partner	Average cycle times (months)
New Zealand	14.8
USA	16.2
Germany	29.9
Singapore	32.2
India	38.8
France	45.1
Other treaty partners (de minimis rule applies)	20.2
Grand total	26.0

This data is displayed as a bar chart in Figure 18 below.

Figure 18: Transfer pricing MAP case 5-year average cycle time

Table 19: Non-transfer pricing MAP case 5-year average cycle time

Treaty partner	Average cycle times (months)
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New Zealand	6.3
United Kingdom	8.4
Netherlands	14.0
Germany	14.8
Other treaty partners (de minimis rule applies)	21.0
Grand total	11.8

This data is displayed as a bar chart in Figure 19 below.

Figure 19: Non-transfer pricing MAP case 5-year average cycle time

QC 43088

Our commitment to you

We are committed to providing you with accurate, consistent and clear information to help you understand your rights and entitlements and meet your obligations.

If you follow our information and it turns out to be incorrect, or it is misleading and you make a mistake as a result, we will take that into account when determining what action, if any, we should take.

Some of the information on this website applies to a specific financial year. This is clearly marked. Make sure you have the information for the right year before making decisions based on that information.

If you feel that our information does not fully cover your circumstances, or you are unsure how it applies to you, contact us or seek professional advice.

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