



APA & MAP COUNTRY GUIDE 2018 – ROMANIA

New paths ahead for international tax
controversy





ROMANIA

APA PROGRAM

KEY FEATURES	
Competent authority	National Agency for Tax Administration ('NATA')
Relevant provisions	Article 52 of Law 207/2015 of the Fiscal Procedural Code; and Order 3735/2015 for the procedure on the issuance and modification of APAs and the amendment of APAs.
Types of APAs available	Unilateral, bilateral, and multilateral APAs are available.
Acceptance criteria	No specific guidance.
Key timing requests, deadlines	NATA will issue a decision on the APA application within 12 months for unilateral agreements; and 18 months for bilateral or multilateral APAs. If NATA requests additional information, the term will be extended with the period between the date of the request and the date when such information was provided to them (that should be no longer than 60 working days when the information is requested from the Taxpayer and six months when information is requested from tax authorities from other jurisdictions). After analysing the request, NATA will issue a draft APA for expressions of opinion and the Taxpayer will have 60 working days to respond. If the APA is issued and the Taxpayer does not agree with the content, the Taxpayer has the right to submit a notification to NATA within 30 days from the date the APA was issued.
APA term limits	There is a five-year maximum term for an APA. NATA may approve longer validity periods for long term intra-group agreements.
Filing fee	Large Taxpayers and/or value of transaction over EUR 4m (approx. USD 4.72m): New APAs EUR 20,000 (approx. USD 23,600) Amendments EUR 15,000 (approx. USD 17,700)



ROMANIA (cont'd)

KEY FEATURES (cont'd)

Filing fee (cont'd)	<p>All others:</p> <p>New APAs EUR 10,000 (approx. USD 11,800)</p> <p>Amendments EUR 6,000 (approx. USD 7,070)</p> <p>If an APA application is rejected by NATA, the Taxpayer may request a refund of the fee paid.</p>
Rollback availability	<p>The general rule is for an APA to enter into force starting from the fiscal year following the one when the transaction was concluded. By way of exception, APAs may also apply starting from the fiscal year in which the application was submitted or the APA was issued, provided that certain conditions are met.</p>
Collateral issues	<p>If the transaction(s) covered by the APA and/or the Taxpayer is subject to any fiscal, administrative or criminal procedure, this will result in the rejection of the APA application.</p>

PRE-FILING REQUIREMENTS

Overview	<p>The Taxpayer may request a meeting with the representatives of NATA prior to submitting the APA request. This is highly recommended as it provides for the opportunity of the Taxpayer to present:</p> <ul style="list-style-type: none">■ the business currently carried out and anticipated to be carried out in Romania, as well as the overall activity of the Taxpayer and intercompany transactions; and■ the transaction covered by the APA, including the nature, pricing model, parties involved, and estimated financial results. <p>Further to this pre-filing meeting, NATA will confirm if the transaction(s) qualify for an APA. There is no obligation to submit or present any documentation to NATA for the purpose of the meeting.</p>
Anonymous pre-filing availability	<p>Anonymous pre-filing is not available.</p>



APPLICATION REQUIREMENTS

Content of application

The APA application must include the following:

- a description of the transaction to be covered under the proposed APA;
- details of the Taxpayer and of the affiliated person(s)/PE involved in the transaction;
- an overview of the organisational, legal and operational structure of the group, a list of group entities and their geographical location, and shareholdings within the group;
- a general description of the activity of the group and of the Taxpayer, business strategy, including any changes that have occurred prior to submitting the request;
- a description of the main functions performed, risks borne and assets used by each entity in the group that contribute significantly to defining and creating value;
- a description of intangible assets' owners within the group and of the relevant property rights, the arrangements for costs contributions, or any research and development activities;
- a description of any cost contribution arrangements concluded by the Taxpayer with affiliated parties;
- a description of business restructurings of which the Taxpayer was involved prior to submitting the APA application;
- a description of the transaction to be carried out between the Taxpayer and an affiliated person/PE that will be subject to the APA, highlighting the particulars of such transactions and including transactional flows, invoicing flows, and estimated value of the transaction;
- a general description of the transfer pricing policy applicable at the level of the Taxpayer;
- a detailed presentation of the functional analysis and comparability analysis, including contractual terms of the transaction (copies of the draft agreement to be concluded between the parties should be included as an annex);



ROMANIA (cont'd)

APPLICATION REQUIREMENTS (cont'd)

Content of application (cont'd)	<ul style="list-style-type: none">■ description of the TP method chosen to set up pricing for the transaction covered under the proposed APA, together with details on how the tested party was established;■ the date from which the APA is to enter into force and its validity period;■ presentation of the critical presumptions that may influence the proposed APA;■ reference to the relevant foreign tax authorities involved in the APA;■ proof of payment of the APA filing fee;■ documentation of any APAs concluded with other foreign tax authorities that are related to the relevant transaction of the proposed APA, but to which NATA is not a party; and■ affidavits confirming the accuracy of the information included within the APA request, as well as any criminal or fiscal investigations over the transaction subject to the request.
Language	The documentation must be in Romanian. If the Taxpayer has any documentation related to the transaction in another language, it needs to be accompanied by Romanian authorised translations.
SME provisions	No specific guidance.

OTHER PROCEDURAL CONSIDERATIONS

General	NATA follows a standard pre-filing, application and monitoring process. There are no unique procedural aspects.
Monitoring & compliance	The Taxpayer must submit annual reports regarding the manner in which the terms and conditions described and approved through the APA are fulfilled.
Renewal procedure	The Taxpayer may request an extension of an APA in writing at least 30 days prior to the end of the validity period of the existing APA, provided that the conditions covered by the existing APA remain unchanged. The Taxpayer may amend an existing APA if the conditions of the transaction covered under the APA have changed.



ROMANIA (cont'd)

MAP PROGRAM

KEY FEATURES	
Competent authority	National Agency for Tax Administration ('NATA')
Relevant provisions	Title IX from the Law 207/2015 of the Fiscal Procedural Code
Acceptance criteria	Taxpayers may request a MAP if taxation has or is likely to occur that is not in accordance with the provisions of a DTT to which Romania is signatory.
Key timing requests, deadlines	If requested under a Romanian DTT, Taxpayers must make a MAP request before the deadline stipulated established under the relevant DTT, from the date of the NATA notification which leads or may lead to double taxation. Taxpayers have three years to present a case to NATA under the EU Arbitration Convention (90/436/EEC).
APPLICATION REQUIREMENTS	
Content of application	<p>The MAP request should include the following:</p> <ul style="list-style-type: none">■ the reason for the MAP request, as well as the fiscal identification data of the affected Taxpayer;■ to the extent possible, the identification data of the other tax authority involved and/or taxpayers/residents in the relevant foreign jurisdiction;■ the article(s) of the DTT or Arbitration Convention that are considered to be violated, and the Taxpayer's interpretation in this respect;■ the opinion of the Taxpayer affected on how to remedy the double taxation;■ fiscal years and amounts subject to the double taxation;



ROMANIA (cont'd)

APPLICATION REQUIREMENTS (cont'd)

Content of application (cont'd)

- in all cases where double taxation is generated by transfer pricing adjustments, a detailed description of the structure of the transactions subject to the double taxation, the related persons involved and the manner in which the double taxation has been generated, with the presentation of the transfer pricing file for those transactions, if available;
- a summary of the facts and an analysis of the issues for which MAP is requested, with the submission of supporting documents, as appropriate, respectively details of the facts and circumstances relevant to the case;
- a copy of any other relevant MAP request and the associated documents filed, or to be filed, with the tax authority of the other contracting state, including copies of correspondence from the other tax authority, copies of briefs, objections/ complaints submitted in response to the action that generated the double taxation;
- a statement regarding the existence/non-existence of a prior request to the tax authority of either contracting state on the same or related issue;
- information on the legislation of the other State regarding prescription periods or other particularities of tax legislation that may affect the implementation of any commonly agreed decisions between the two tax authorities, if available;
- details of legal remedies and procedures initiated by the person concerned with respect to relevant transactions and court decisions on the subject of the MAP;
- in all cases where a person to act as an authorised representative is appointed, the presentation in original of a document, drawn up according to the legal provisions, indicating the quality of the designated person(s) and the limits of the power of attorney;



ROMANIA (cont'd)

APPLICATION REQUIREMENTS (cont'd)

Content of application (cont'd)

- the submission of other data/information or documents considered relevant by the person affected, including a copy of any arrangements or an agreement reached with the other Contracting State that might affect the conduct of the MAP, if applicable; and
- any other specific additional information requested in writing by the tax authorities involved that are considered necessary to carry out the substantive examination of the case in question.

Language

No specific guidance.

OTHER PROCEDURAL CONSIDERATIONS

Interaction with domestic proceedings

Taxpayers may pursue Romanian domestic legal proceedings separately from MAP; however, if a resolution is reached through MAP negotiations, the domestic litigation must be discontinued before its implementation.

Arbitration

As Romania is a member of the European Union, Taxpayers may initiate the arbitration procedure under the Tax Dispute Resolution Mechanism Directive on 10 October 2017. The Directive is applicable to matters submitted after 1 July 2019, on issues related to the tax year starting on or after 1 January 2018. The EU Arbitration Convention also imposes a binding obligation on EU member states to eliminate double taxation under DTTs including, if necessary, by reference to the opinion of an independent advisory body.

STATISTICS

APA

There were two APA application requests in 2015 and four completed applications.

MAP

Romania does not make publicly available statistics on MAP requests.



ROMANIA (cont'd)

DOUBLE TAXATION TREATY NETWORK

The following treaties include MAP provisions which are the basis for bilateral and multilateral APA negotiations:

Albania	Egypt	Kazakhstan	Namibia	Sudan
Algeria	Estonia	Korea	Netherlands	Sweden
Armenia	Ethiopia	(Democratic	Nigeria	Switzerland
Australia	Finland	People's Republic	Norway	Syria
Austria	France	of)	Pakistan	Tajikistan
Azerbaijan	Georgia	Korea (Republic	Philippines	Thailand
Bangladesh	Germany	of)	Poland	Tunisia
Belarus	Greece	Kuwait	Portugal ^(VI)	Turkey
Belgium	Hong Kong ^(IV)	Latvia	Qatar	Turkmenistan
Bosnia- Herzegovina	Hungary	Lebanon	Russia	Ukraine
Bulgaria ^(IV)	Iceland	Lithuania	San Marino	United Arab Emirates ^(IV)
Canada	India ^(IV)	Luxembourg ^(VI)	Saudi Arabia	United Kingdom
China	Indonesia	Macedonia	Serbia	United States
Croatia	Iran	Malaysia	Singapore	Uruguay
Cyprus	Ireland	Malta	Slovakia	Uzbekistan
Czech Republic	Israel	Mexico	Slovenia	Vietnam
Denmark	Italy	Moldova	South Africa	Zambia
Ecuador	Japan ^(VI)	Montenegro	Spain ^(IV)	
	Jordan	Morocco	Sri Lanka	

NOTES

- I denotes treaties with MAP arbitration provisions.
- II denotes treaties with the USSR that remain applicable until a separate tax treaty is concluded.
- III denotes treaties between the countries' representative office in Taipei and the Taipei Economic and Cultural Office in the relevant country.
- IV denotes treaties that became effective within the last five years.
- V denotes treaties that are awaiting ratification.
- VI denotes MAP provisions identical to para 3, art 25 of the OECD Model Convention with respect to Taxes on Income and on Capital.
- VII arbitration is to be conducted under the statutes of the ECJ.
- VIII arbitration is to be conducted under the statutes of the ICJ.

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