



APA & MAP COUNTRY GUIDE 2018 – RUSSIA

New paths ahead for international tax
controversy





RUSSIA

APA PROGRAM

KEY FEATURES	
Competent authority	Federal Tax Service of Russia ('FTS')
Relevant provisions	Articles 105.19-105.25 of the Russian Tax Code ('RTC') On 29 March 2018 the Ministry of Finance of Russia issued an Order on the procedure for conclusion of bilateral APAs with the authorised bodies of foreign states (published on 3 May 2018).
Types of APAs available	Unilateral, bilateral, and multilateral APAs are available.
Acceptance criteria	Requests are more likely to be successful if transfer pricing issues are not complex, and involve transactions that have various comparables recognised domestically and internationally.
Key timing requests, deadlines	An APA will only come into force as of January 1 of the calendar year following the year in which it was signed.
APA term limits	There is a three-year maximum term for an APA.
Filing fee	RUB 2m (approx. USD 32,100)
Rollback availability	No specific guidance.
Collateral issues	No specific guidance.



RUSSIA (cont'd)

PRE-FILING REQUIREMENTS

Overview

There is no specific guidance in the RTC. The Order introduces a pre-filing stage for the conclusion of bilateral APAs.

Pre-filing is an optional (but advisable) stage, which allows the Taxpayer and FTS to weigh up the prospects of a successful conclusion of an APA. An application for a pre-filing negotiation stage must include:

- Information relevant to the conclusion of APA:
 - the name and tax residence country of the parties involved;
 - the global group structure;
 - a description of cross-border transactions; and
 - the proposed TP method.
- Issues to be considered:
 - the existence of the grounds for entering into an APA;
 - the procedure for determining prices and/or applying TP method suggested by the taxpayer;
 - the procedure and timeline for entering into the APA,
 - the prospects for mutual agreement between the competent authorities and its implementation in the Russian Federation.

The results of these preliminary negotiations are not legally binding.

Anonymous pre-filing availability

Anonymous pre-filing is not available.



RUSSIA (cont'd)

APPLICATION REQUIREMENTS

Content of application	<p>The procedure for APAs is initiated by submitting a formal application in a prescribed form, together with all necessary documents. The application should contain the following information:</p> <ul style="list-style-type: none">■ the name and tax residence country of the parties involved;■ the global group structure;■ a description of cross-border transaction(s) to be covered;■ actual conditions relevant to the cross-border transaction(s);■ arm's length conditions relevant to the cross-border transaction(s);■ the proposed TP method and expected result of the proposed method;■ financial performance; and■ information on the outcome of the application of the proposed TP method, using as an example of the most recent three years for which factual information is available.
Language	Documentation should be submitted in Russian.
SME provisions	Unilateral APAs are only available to 'Major Taxpayers'.



RUSSIA (cont'd)

OTHER PROCEDURAL CONSIDERATIONS

General

On 3 May 2018 the Russian Ministry of Finance published an Order on the procedure for conclusion of bilateral and multilateral APAs. Under the Order, Taxpayers may request APAs with states that have effective DTTs with Russia. Taxpayers have the option of holding a pre-filing meeting with the FTS, and the Order also provides a recommended APA application form and list of required documents, including:

- a draft APA;
- documents on activities involving controlled transactions and on controlled transactions under an APA;
- copies of charter documents;
- copy of certificate of registration;
- copy of tax registration certificate;
- financial performance for the last reporting period;
- document confirming payment of State duty; and
- other information and documentation as requested by the FTS.

The Order proposes a standard pre-filing, application and monitoring process. Taxpayers may use it as a guide for initiating the APA application process.

Monitoring & compliance

The Taxpayer must provide the FTS with a notification on controlled transactions under the APA. The FTS will check the Taxpayer's compliance with the APA.

Renewal procedure

Applications for the renewal of an APA should be filed six months before the expiry date. APAs may be prolonged for a term not exceeding two years in accordance with the general procedure.



RUSSIA (cont'd)

MAP PROGRAM

KEY FEATURES	
Competent authority	Division of International Taxation of the Department of Tax and Customs Policy, Ministry of Finance ('MOF') for unilateral APAs; and the Federal Tax Service for bilateral and multilateral APAs, and exchange of information procedures.
Relevant provisions	There are no specific provisions for the MAP procedure in domestic law. Taxpayers must rely on the MAP provisions under DTTs.
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 Russia is signatory.
Key timing requests, deadlines	Most of Russia's DTTs permit Taxpayers to present a case to the MOF within three years from the first notification to the Taxpayer of the actions giving rise to taxation not in accordance with the DTT. However, time limits may vary, and the relevant DTT should be consulted for the applicable time limit.
APPLICATION REQUIREMENTS	
Content of application	Taxpayers must provide at least the following: <ul style="list-style-type: none">■ Copies of relevant contracts;■ Copies of any relevant correspondence with the Russian tax authorities, as well as copies of correspondence; and■ Copies of any correspondence with the relevant foreign jurisdiction(s).
Language	No specific guidance.



RUSSIA (cont'd)

OTHER PROCEDURAL CONSIDERATIONS

***Interaction
with domestic
proceedings***

No specific guidance.

Arbitration

No specific guidance.

STATISTICS

APA

Since 2012 the authorised body in Russia has received 82 draft APAs and concluded 25 of those on a unilateral basis. Additionally, at the beginning of the 2018 fiscal year, nine APAs have been concluded on an unilateral basis.

MAP

Russia had a total of two active MAP applications as of 31 December 2017.



RUSSIA (cont'd)

DOUBLE TAXATION TREATY NETWORK

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

Albania	Czech Republic	Kazakhstan	Mongolia	Spain
Algeria	Denmark	Kyrgyzstan	Montenegro	Sri Lanka
Argentina	Egypt	Korea	Morocco	Sweden
Armenia	Finland	(Democratic	Namibia	Switzerland
Australia	France	People's Republic	Netherlands	Syria
Austria	Germany	of)	New Zealand	Tajikistan
Azerbaijan	Greece	Korea (Republic	Norway	Thailand
Belarus	Hong Kong ^(IV)	of)	Philippines	Turkey
Belgium	China	Kuwait	Poland	Turkmenistan
Botswana	Hungary	Latvia	Portugal	Ukraine
Brazil	Iceland	Lebanon	Qatar	United Arab
Bulgaria	India	Lithuania	Saudi Arabia	Emirates
Canada	Indonesia	Luxembourg ^(VI)	South Africa	United Kingdom
Chile	Iran	Macedonia	Romania	Mexico
China ^(IV)	Ireland	Malaysia	Saudi Arabia	United States
Croatia	Israel	Mali	Serbia	Uzbekistan
Cuba	Italy	Malta	Singapore	Venezuela
Cyprus	Japan ^{(II), (V), (VI)}	Mexico	Slovakia	Vietnam
		Moldova	Slovenia	

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.

DLA PIPER CONTACTS



Joel Cooper

Partner, Co-Head International
Transfer Pricing

T +44 207 796 6929

M +44 773 829 5470

joel.cooper@dlapiper.com



Randall Fox

Partner, Co-Head of
International Transfer Pricing

T +44 207 796 6928

M +44 773 8295 935

randall.fox@dlapiper.com

RUSSIA



Ruslan Vasutin

Partner, Co-Tax Location Head

T +7 812 448 7200

ruslan.vasutin@dlapiper.com



www.dlapiper.com

DLA Piper is a global law firm operating through various separate and distinct legal entities. Further details of these entities can be found at www.dlapiper.com.

This publication is intended as a general overview and discussion of the subjects dealt with, and does not create a lawyer-client relationship. It is not intended to be, and should not be used as, a substitute for taking legal advice in any specific situation. DLA Piper will accept no responsibility for any actions taken or not taken on the basis of this publication. This may qualify as "Lawyer Advertising" requiring notice in some jurisdictions. Prior results do not guarantee a similar outcome.

Copyright © 2018 DLA Piper. All rights reserved. | AUG18 | 3318129