



# APA & MAP COUNTRY GUIDE 2018 – UNITED KINGDOM

New paths ahead for international tax  
controversy





## UNITED KINGDOM

### APA PROGRAM

KEY FEATURES	
<b>Competent authority</b>	HM Revenue and Customs ('HMRC')
<b>Relevant provisions</b>	Sections 218-230 of the Taxation (International and Other Provisions) Act 2010 ('TIOPA'); and HMRC Statement of Practice 2 (2010) ('SP2/10'); and HMRC Guidance INTM422000 et seq.
<b>Types of APAs available</b>	Unilateral, bilateral, and multilateral APAs are available.
<b>Acceptance criteria</b>	<p>APA applications are more likely to be successful if:</p> <ul style="list-style-type: none"><li>■ the transfer pricing issues are complex, and uncertainty exists as to how the arm's length standard should be applied;</li><li>■ HMRC consider negotiating the APA a good use of its resources; or</li><li>■ there is a high probability of double taxation without an APA.</li></ul> <p>APAs must be bilateral rather than unilateral except where the other party to the transaction(s) is resident in a jurisdiction with which the United Kingdom has no DTT, the treaty partner has no APA process, or HMRC considers there is little to be gained by seeking a bilateral agreement.</p>
<b>Key timing requests, deadlines</b>	There is no specific guidance. Negotiations between the Taxpayer and HMRC during the pre-filing stage will determine the date from which the APA will commence.
<b>APA term limits</b>	There is a five-year maximum term for an APA.
<b>Filing fee</b>	There is no filing fee.
<b>Rollback availability</b>	Rollback is available on a case by case basis after HMRC's consideration of the relevant facts and circumstances. In bilateral cases, the decision will also depend on the ability or willingness of the relevant foreign tax authorities.



## UNITED KINGDOM (cont'd)

### KEY FEATURES (cont'd)

<b><i>Collateral issues</i></b>	The nature of any current transfer pricing enquiries, HMRC claims, and any other relevant issues, including the potential of the United Kingdom's diverted profits tax to apply to the covered transactions should be raised with HMRC at the pre-filing stage.
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### PRE-FILING REQUIREMENTS

<b><i>Overview</i></b>	<p>At least one 'expression of interest meeting' with HMRC is recommended to discuss:</p> <ul style="list-style-type: none"><li>■ the nature of the transfer pricing issues intended to be covered by an APA;</li><li>■ details of the tax residence of the parties involved and importance to the wider business of the transactions covered; and</li><li>■ a description of the proposed TP method.</li></ul>
<b><i>Anonymous pre-filing availability</i></b>	Anonymous pre-filing is not available.



### APPLICATION REQUIREMENTS

#### *Content of application*

The application should set out:

- the applicant's understanding of the effect of the relevant legislation and DTT(s) in relation to the relevant transfer pricing issues;
- the areas where clarification of that effect are required; and
- a proposal for clarifying the effect of the legislation in accordance with the applicant's understanding. All proposals need to be supported by:
  - identification of the parties and accounts for previous three years
  - description of the transfer pricing issues proposed, analysis of the functions and risks, and actual and projected financial data of the parties
  - description of the global group structure, and major categories of transaction flows of the relevant parties
  - description of records to be maintained in support of proposed TP method and information demonstrating the Taxpayer's tax returns will conform to the APA's terms
  - description of any current tax enquiries or HMRC claims relevant to issues covered by the proposed APA
  - chargeable periods to be covered by the APA
  - identification of assumptions made in developing the proposed TP method critical to the reliability of its application under the arm's length standard
  - analysis of the diverted profits tax position in respect of the covered transactions and any transactions directly connected to them
  - any current or expired rulings issued by a foreign tax authority
  - where appropriate, a request for HMRC assistance in reaching a bilateral or multilateral APA



## UNITED KINGDOM (cont'd)

### APPLICATION REQUIREMENTS (cont'd)

<b>Language</b>	The documentation should be submitted in English.
<b>SME provisions</b>	Access to APAs are limited by the TIOPA which exempts certain SMEs from United Kingdom's transfer pricing legislation.

### OTHER PROCEDURAL CONSIDERATIONS

<b>General</b>	HMRC follows a standard pre-filing, application and monitoring process. There are no unique procedural aspects.
<b>Monitoring &amp; compliance</b>	The Taxpayer must provide an 'Annual Report' accompanying its business tax return for the duration of the APA. Details as to what should be included in the Annual Report are provided on a case by case basis.
<b>Renewal procedure</b>	Applications for the renewal of APAs are required to be lodged six months before expiry.



## UNITED KINGDOM (cont'd)

### MAP PROGRAM

KEY FEATURES	
<b>Competent authority</b>	HM Revenue and Customs ('HMRC')
<b>Relevant provisions</b>	Section 124 of the TIOPA; HMRC Statement of Practice I (2018) ('SPI/I8'); and HMRC Guidance INTM 423000 et seq.
<b>Acceptance criteria</b>	A MAP request can be made when a Taxpayer considers that the actions of one or both contracting states' tax authorities results, or will result, in taxation not in accordance with the relevant DTT. Whereas provisions in older UK DTTs require that Taxpayers approach the tax authority of their country of residence to request treaty relief, the SPI/I8 makes clear that, under new UK DTTs, Taxpayers can approach the tax authority of either contracting state with a request to initiate MAP.



## UNITED KINGDOM (cont'd)

### APPLICATION REQUIREMENTS

#### ***Content of application***

Taxpayers must submit a MAP request to HMRC to initiate the MAP process. While there is no set form for submission, HMRC require sufficient information and documentation to enable a full assessment of the request, including, for requests under the relevant DTT:

- the year(s) concerned;
- the tax convention article(s) that the Taxpayer asserts is not being correctly applied, and the Taxpayer's interpretation of the application of the article;
- the full names and addresses of the parties to which the MAP relates;
- the UK party's HMRC office and reference number;
- for requests submitted by an agent, signed authority for the agent to act;
- HMRC Customer Compliance Manager or HMRC other contact;
- where the request is in respect of a UK adjustment, the international specialist or other HMRC officer responsible for the enquiry that lead to the adjustment;
- UK tax computations for all years concerned. In the case of a UK adjustment computations before and after the adjustment;
- for overseas adjustments, details of and legal or administrative process that affects the MAP. Has the overseas state denied or suspended MAP as a result of a particular domestic legal or administrative process?;
- contact details for the relevant foreign tax authority, if the claim has already been made to the other country;
- details of previous requests, if the request relates to an issue that is the same as an issue that has been subject to an earlier request;



## UNITED KINGDOM (cont'd)

### APPLICATION REQUIREMENTS (cont'd)

#### **Content of application (cont'd)**

- exchange rates used;
- for transfer pricing cases, the name, address and, if possible, the Taxpayer identification number of any related foreign taxpayer involved;
- the relationship, situation, or structure of the transactions, issues, or related parties involved (advising of any changes in these matters that occur after the request has been filed would be helpful);
- a summary of the facts and an analysis of the issues for which tax authority assistance is requested, including any specific issues raised by the tax administrations affecting the Taxpayer and the related amounts (in both currencies and supported by calculations, if applicable);
- for transfer pricing cases, documentation as described in domestic legislation of the Taxpayer's state of residence if available (where documentation is inordinately voluminous, a description of the documentation prepared in connection with the transactions which are the subject of the MAP request may be acceptable);
- a schedule of the time limitations in each jurisdiction (domestic as well as tax convention time limits) in respect of the years for which relief is sought (in cases of multiple Taxpayers, a schedule for each);
- a statement indicating whether the Taxpayer has filed a notice of objection, notice of appeal, refund claim, or comparable document in either of the relevant jurisdictions;
- where the request for tax authority assistance involves issues that are currently or were previously considered by the tax authorities of either contracting state as part of an APA ruling, or similar proceedings, a statement to that effect;



## UNITED KINGDOM (cont'd)

### APPLICATION REQUIREMENTS (cont'd)

#### *Content of application (cont'd)*

- any other facts that the Taxpayer may consider relevant;
- a copy of any settlement or agreement reached with the other jurisdiction which may affect the MAP process;
- the Taxpayer's views on any possible bases on which to resolve the issues; and
- a statement to the effect that the request is also made under the EU Arbitration Convention where applicable.

The request should generally be signed by the Taxpayer, or by an authorised person on behalf of the Taxpayer, confirming the accuracy and completeness of the facts and information presented in the request. Alternatively, an accompanying document, stating as much, may be provided within a reasonable period of time after the submission. In addition to the above, the information below will help HMRC form an initial view of the strength of the case for granting relief in instances where the request is in respect of an overseas adjustment. The list is not exhaustive and in more complex cases HMRC will make additional requests for information to consider the request:

- the relationship of the claimant(s) to other relevant parties;
- in transfer pricing or profit attribution claims, reports or analyses provided by the Taxpayer to support their filed position;
- a narrative setting out the matter under dispute, a brief outline of the progress of the dispute, and the outcome; and
- in transfer pricing or profit attribution requests, the results of benchmark studies used to support the filing position and the alternative position taken by the other state.

The following information and documentation is required for requests under the EU Arbitration Convention:

- identification (such as name, address, tax identification number) of the enterprise of the Member State that presents its request and of the other parties to the relevant transactions;



## UNITED KINGDOM (cont'd)

### APPLICATION REQUIREMENTS (cont'd)

#### **Content of application (cont'd)**

- details of the relevant facts and circumstances of the case (including details of the relations between the enterprise and the other parties to the relevant transactions);
- identification of the tax periods concerned;
- copies of the tax assessment notices, tax audit report or equivalent leading to the alleged double taxation;
- details of any appeals and litigation procedures initiated by the enterprise or the other parties to the relevant transactions and any court decisions concerning the case;
- an explanation by the enterprise of why it considers that the principles set out in article 4 of the EU Arbitration Convention have not been observed;
- an undertaking that the enterprise shall respond as completely and quickly as possible to all reasonable and appropriate requests made by a tax authority and have documentation at the disposal of the tax authorities; and
- any specific additional information requested by the tax authority within two months upon receipt of the Taxpayer's request.

Taxpayer's may also file 'Protective MAP requests'. A Protective MAP request is a unique feature of the HMRC MAP process, the purpose of which is to protect Taxpayers against missing the prescribed time limits. The minimum information required in a presentation for a protective MAP request is:

- details of the year(s) concerned;
- a brief description of the action giving rise, or expected to give rise, to taxation not in accordance with the relevant DTT; and
- the full names and addresses of the parties to which the MAP relates, including the UK Taxpayer's HMRC office and reference number.

A protective MAP request will not trigger the start date of a MAP case.

#### **Language**

The documentation should be submitted in English.



## UNITED KINGDOM (cont'd)

### OTHER PROCEDURAL CONSIDERATIONS

#### *Interaction with domestic proceedings*

SPI/18 provides that the UK Taxpayer's ability to request MAP is not affected by domestic administrative or statutory dispute resolution processes. HMRC may grant access to MAP, even in circumstances where the Taxpayer and HMRC enter into an audit settlement. However, it must be considered how entering into statutory or administrative remedies with other tax authorities might affect a Taxpayer's accessibility to MAP.

#### *Arbitration*

As the United Kingdom 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 Jul 2019, on issues related to the tax year starting on or after 1 January 2018. The EU Arbitration Convention (90/436/EEC) 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. Access to these arbitration procedures is subject to the United Kingdom's exit from the European Union.

### STATISTICS

#### *APA*

There were 67 APA application requests in 2015 and 37 completed applications. The average completion time was 21 months. HMRC has had an APA program since 1999.

#### *MAP*

The United Kingdom had a total of 314 active MAP applications as of 31 December 2016. The average time needed to close MAP cases is 28 months for transfer pricing cases, and 56 months for other cases.



## UNITED KINGDOM (cont'd)

### DOUBLE TAXATION TREATY NETWORK

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

Albania <sup>(I), (IV)</sup>	Estonia	Kenya
Algeria <sup>(I), (IV)</sup>	Ethiopia <sup>(IV)</sup>	Korea (Republic of)
Argentina	Falkland Islands	Kosovo <sup>(I), (IV)</sup>
Armenia <sup>(I), (IV)</sup>	Faroe Islands	Kuwait
Australia	Fiji	Latvia
Austria	Finland	Lesotho
Azerbaijan	France <sup>(I)</sup>	Libya
Bahrain <sup>(I), (IV)</sup>	Gambia	Liechtenstein <sup>(I), (IV)</sup>
Bangladesh	Georgia	Lithuania
Barbados <sup>(IV)</sup>	Germany <sup>(I)</sup>	Luxembourg <sup>(VI)</sup>
Belarus	Ghana	Macedonia
Belgium	Guernsey	Malaysia
Bolivia	Guyana	Malta
Bosnia-Herzegovina	Hong Kong	Mauritius
Botswana	Hungary	Mexico
British Virgin Islands	Iceland <sup>(I), (IV)</sup>	Moldova
Bulgaria <sup>(IV)</sup>	India	Mongolia
Canada <sup>(I)</sup>	Indonesia	Monsterrat
Cayman Islands	Ireland	Montenegro
Chile	Isle of Man	Morocco
China <sup>(IV)</sup>	Israel	Netherlands <sup>(I)</sup>
Croatia <sup>(IV)</sup>	Italy	New Zealand
Cyprus	Ivory Coast	Nigeria
Czech Republic	Japan <sup>(I), (IV), (VI)</sup>	Norway <sup>(I), (IV)</sup>
Denmark	Jordan	Oman
Egypt	Kazakhstan	Pakistan



## UNITED KINGDOM (cont'd)

Panama <sup>(IV)</sup>	Slovenia	Turkey
Papua New Guinea	South Africa	Turkmenistan <sup>(IV)</sup>
Philippines	Spain <sup>(I), (IV)</sup>	Uganda
Poland	Sri Lanka	Ukraine
Portugal	Sudan	United Arab Emirates <sup>(IV)</sup>
Qatar <sup>(I)</sup>	Swaziland	United States
Romania	Sweden <sup>(I), (IV)</sup>	Uruguay <sup>(I), (IV)</sup>
Russia	Switzerland <sup>(I)</sup>	Uzbekistan
Saudi Arabia	Taiwan	Venezuela
Senegal <sup>(IV)</sup>	Tajikistan <sup>(I), (IV)</sup>	Vietnam
Serbia	Thailand	Zambia <sup>(IV)</sup>
Singapore	Trinidad and Tobago	Zimbabwe
Slovak Republic	Tunisia	

### 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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