



# APA & MAP COUNTRY GUIDE 2018 – UKRAINE

New paths ahead for international tax  
controversy





## UKRAINE

### APA PROGRAM

KEY FEATURES	
<b>Competent authority</b>	State Fiscal Service of Ukraine ('SFSU')
<b>Relevant provisions</b>	Paragraph 39.6 of the Tax Code of Ukraine; and Order of the Cabinet of Ministers of Ukraine dated July 17, 2015, No. 504 'On conclusion of advance pricing agreements in respect of controlled transactions for transfer pricing purposes' ('APA Procedure') (as amended).
<b>Types of APAs available</b>	Unilateral, bilateral, and multilateral APAs are available.
<b>Acceptance criteria</b>	Only large Taxpayers can apply for the APA. 'Large Taxpayers' are defined as Ukrainian entities or PEs of non-resident Taxpayers that meet one of the following criteria: <ul style="list-style-type: none"><li>■ amount of income for four consecutive tax quarters exceeds EUR 50m (approx. USD 59m); or</li><li>■ amount of tax payments to state budget for the same period exceeds EUR 1m (approx. USD 1.9m) (provided customs duties included in this amount do not exceed EUR 500,000 (approx. USD 590,000)).</li></ul>
<b>Key timing requests, deadlines</b>	There are no deadlines for the submission of early engagement or APA requests. The SFSU has 60 calendar days to respond to early engagement requests. There are no specific timeframes for completion of the APA procedure after submission of an APA application to the SFSU.
<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 for prior years.
<b>Collateral issues</b>	Administrative or tax issues which are relevant for an APA must be addressed with the SFSU during the pre-filing stage and are subject to mutual agreement between the parties.



### PRE-FILING REQUIREMENTS

#### Overview

Taxpayers may request a preliminary feasibility assessment from SFSU ('early engagement'), during which they can clarify the feasibility of an APA and ensure proper preparation of documents and materials required for the APA application. In order to apply for early engagement, Taxpayers should send a request to SFSU containing the following information:

- purpose of the request;
- Taxpayer's name;
- Taxpayer's code in the Unified State Register of Enterprises and Organisations of Ukraine;
- Taxpayer's representative that will take part in early engagement, including their position, full name, phone number, email address, and documents confirming the authority to represent the Taxpayer;
- substance and actual facts of the controlled transaction(s) covered under the proposed APA;
- business activities of the parties to the controlled transaction(s) and jurisdiction(s) of tax residency of such parties;
- information on the related parties, including an organisational structure of the group; and
- other information which the Taxpayer considers relevant.

During early engagement, the SFSU will arrange a meeting with the Taxpayer. Within 60 calendar days after submission of the request the SFSU will notify the Taxpayer in writing of the results of the SFSU's preliminary feasibility assessment.

#### ***Anonymous pre-filing availability***

Anonymous pre-filing is not available.



## UKRAINE (cont'd)

### APPLICATION REQUIREMENTS

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

An APA application must be accompanied with the following documents:

- transfer pricing documentation as required by the Tax Code of Ukraine;
- copies of the constituent documents of the Taxpayer;
- accounting records and financial statements of the Taxpayer for the last three reporting periods (years);
- description of any current tax disputes which relate to the APA application;
- documentation that confirms tax residency of non-resident party;
- description of any implications from DTTs between Ukraine and the country of tax residency of the party on subject of the APA;
- results of analysis of the possible impact of the APA on tax obligations of parties to the controlled transaction(s);
- copies of any APA application(s) that the related party has filed in any other jurisdiction(s);
- copy of the document which confirms the right of the Taxpayer's representative(s) to take part in the APA application process on its behalf; and
- proposals regarding procedure, terms, and a list of documents which will confirm the Taxpayer's compliance with the APA terms.

Taxpayers have the right to provide, and SFSU has the right to request, any other documents which may be required for the APA procedure.



## UKRAINE (cont'd)

### APPLICATION REQUIREMENTS (cont'd)

<b>Language</b>	The APA application, supporting documentation and materials should be prepared in Ukrainian. Any documents which are prepared in foreign languages must be translated into Ukrainian. In the case of bilateral and multilateral APA applications, all documentation provided must also be translated into English.
<b>SME provisions</b>	APAs are only available to entities considered Large Taxpayers (as defined above).

### OTHER PROCEDURAL CONSIDERATIONS

<b>General</b>	The SFSU follows a standard pre-filing, application and monitoring process. An APA comes into effect on the date agreed between the SFSU and the Taxpayer, or otherwise on 1 January of the year following that in which the APA was signed.
<b>Monitoring &amp; compliance</b>	Taxpayers that have entered into an APA must submit an annual report on performance under APA, submission deadline, form and content of which is established by respective APA. Conclusion of APA does not exempt the Taxpayer from the requirement to submit report on controlled transactions on an annual basis under the general procedure.
<b>Renewal procedure</b>	In practice, an APA may be renewed; however, there are no specific regulations as to renewal procedure.



## UKRAINE (cont'd)

### MAP PROGRAM

KEY FEATURES	
<b>Competent authority</b>	State Fiscal Service of Ukraine ("SFSU")
<b>Relevant provisions</b>	Chapter 10, section 2 of the Tax Code of Ukraine; and provisions in Ukrainian DTTs.
<b>Acceptance criteria</b>	No specific guidance.
<b>Key timing requests, deadlines</b>	<p>Most of Ukraine's DTTs provide a three-year limitation period for filing MAP applications; however, some DTTs:</p> <ul style="list-style-type: none"><li>do not contain a limitation period at all (i.e. with Azerbaijan, Algeria, United Kingdom, United States, and Sweden);</li><li>provide for a two-year limitation period (i.e. with Italy, Lebanon, Canada, Indonesia, and Iran); or</li><li>refer to domestic limitation period (i.e. with Turkey and Brazil).</li></ul>
APPLICATION REQUIREMENTS	
<b>Content of application</b>	No specific guidance.
<b>Language</b>	No specific guidance.
OTHER PROCEDURAL CONSIDERATIONS	
<b>Interaction with domestic proceedings</b>	No specific guidance.
<b>Arbitration</b>	Ukraine has only one DTT with an arbitration clause (with the Netherlands); however, this is yet to be applied.
STATISTICS	
<b>APA</b>	As of May 2018 no APA has been concluded; however, there is one APA request pending.
<b>MAP</b>	As of May 2018 there are no official statistics on MAP application in Ukraine.



### DOUBLE TAXATION TREATY NETWORK

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

Algeria	Finland	Korea (Republic of)	Morocco	Sweden
Armenia	France	Kuwait	Netherlands <sup>(I)</sup>	Switzerland
Austria	Georgia	Kyrgyzstan	Norway	Syria
Azerbaijan	Germany	Latvia	Pakistan	Tajikistan
Belarus	Greece	Lebanon	Poland	Thailand
Belgium	Hungary	Libya	Portugal	Turkey
Brazil	Iceland	Lithuania	Republic of Cuba	Turkmenistan
Bulgaria	India	Luxembourg <sup>(IV)</sup>	Romania	United Arab Emirates
Canada	Indonesia	Macedonia	Russia	United Kingdom
China	Iran	Malta <sup>(IV)</sup>	Saudi Arabia	United States
Croatia	Ireland <sup>(IV)</sup>	Malaysia <sup>(II)</sup>	Serbia	Uzbekistan
Cyprus <sup>(IV)</sup>	Israel	Mexico	Singapore	Vietnam
Czech Republic	Italy	Moldova	Slovakia	
Denmark	Japan <sup>(III), (VI)</sup>	Mongolia	Slovenia	
Egypt	Jordan	Montenegro	South Africa	
Estonia	Kazakhstan		Spain <sup>(II)</sup>	

#### 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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## UKRAINE



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