





# Advance pricing agreements and other dispute resolution opportunities

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## With you today



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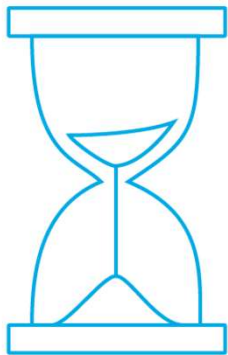
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## Agenda

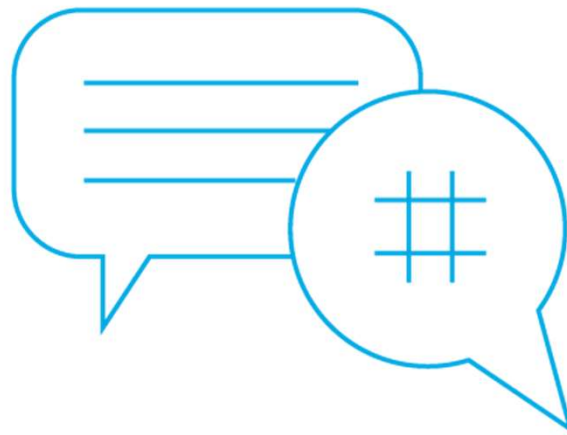


- Overview of advance pricing agreements (APAs)
- Recent updates to the APA process
- Alternatives to the APA process
- International tax planning opportunities

## Learning objectives

By the end of this presentation, participants will be able to:

1. Evaluate the benefits of entering an APA.
2. Describe the process of requesting an APA and/or MAP proceeding.
3. Interpret the international tax planning opportunities in connection with an APA.



# Overview of advance pricing agreements

## What is an advance pricing agreement?

Advance pricing agreements (APAs) are agreements that allow taxpayers to preemptively agree with one or more tax authorities on arm's-length prices for related-party transactions.

- An APA:
  - Determines the best or most appropriate transfer pricing methodology
  - Agrees upon results that satisfy the arm's-length standard and the reasonable efforts test
  - Generally covers a 5-year prospective APA term, with potential rollback to earlier non-statute barred years
  - Offers future renewal opportunities
- Types of APAs
  - Unilateral
  - Bilateral
  - Multilateral

# Unilateral APA vs. Bilateral APA



## Unilateral APA considerations

- Provides certainty with respect to the covered intercompany transactions in one jurisdiction
- Binds only the relevant tax authority
- Generally requires less time to complete
- Typically less costly as only one jurisdiction is involved
- Rollback periods, where permissible, may lead to double tax
- Conversion into a bilateral APA available in certain jurisdictions

## Bilateral APA considerations

- Provides certainty in multiple jurisdictions and eliminates the potential risk of double taxation in those jurisdictions
  - Allows taxpayers to achieve a balanced outcome with input from both tax authorities
- Offers a more effective approach to resolve prior year issues through a rollback
  - Includes the MAP process to resolve double tax from adjustments to prior years
  - Rollback years are only permitted for open filed years (i.e., the statute of limitations must not have expired)
- The IRS has expressed a preference for bilateral APAs over unilateral APAs





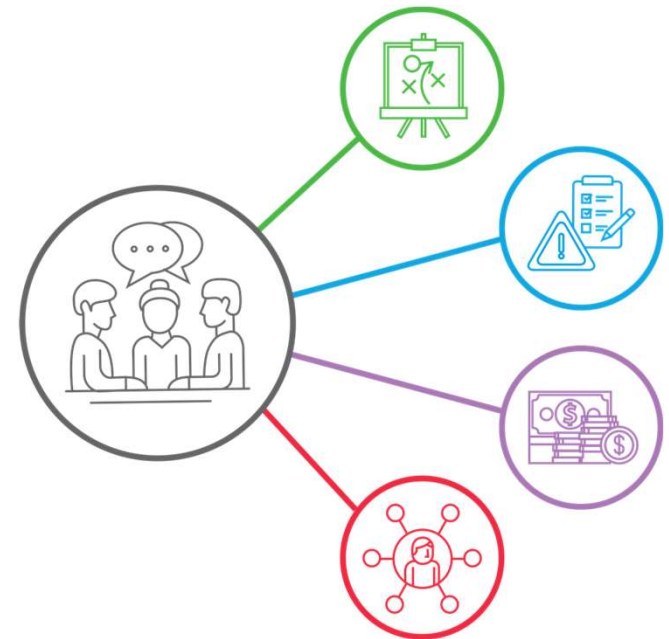
## APA benefits

- Offers a proactive approach to gain greater certainty regarding tax exposure and mitigate costs associated with the preparation of transfer pricing documentation and audit defense
- Provides certainty on transfer pricing policy for a combined period of generally 5 years, in addition to potential roll back years
- Addresses concerns around the domestic tax law appeals process, providing enhanced predictability
- Provides a discussion at the “right level” in a non-confrontational setting
- Offers solutions for complex and difficult transfer pricing issues
- Eliminates/reduces risk of double taxation arising from prior year adjustments (in bilateral APAs)
- Because the costs associated with an APA are paid upfront, large reserves to mitigate transfer pricing exposure become unnecessary



## APA risks

- The process remains a time-consuming exercise
- Process can be a strain on resources for taxpayers and tax authorities both in terms of personnel and expenses
- Generally, the taxpayer can better control the information provided to the tax authority
- May not provide certainty if it involves an unreliable prediction of market conditions without adequate critical assumptions



# U.S. APA procedure overview

## Pre-filing conference

- Certain transactions and/or factual circumstances require a mandatory pre-filing conference
- IRS encourages optional pre-filing conferences in other circumstances
- Taxpayer must complete a pre-filing request form and contact APMA program office with pre-filing request form to schedule meeting
- Can be filed on an anonymous basis
- Taxpayer must complete a pre-filing memorandum or presentation with key factual analyses supporting the proposed transfer pricing methodology

## APA application

- Application must comply with the terms of Revenue Procedure 2015-41
- APA filing fee is USD 113,500 for a new APA and USD 62,000 for an APA renewal
- Application can be filed with properly completed Form 2848 (Power of Attorney)
- Taxpayer must execute consents to extend the statute of limitations during negotiation for years covered by the APA
- Application must be filed by a date that is no later than the applicable return date for that taxable year to be considered a prospective year
- Application can be withdrawn at any time before finalization of terms

## Acceptance and negotiation

- Taxpayer receives official acceptance letter from IRS
- Taxpayer attends opening conference with the IRS
- IRS issues requests for additional information before and/or after the opening conference
- IRS (and relevant foreign tax authority with respect to bilateral APAs) meet multiple times to discuss the APA
- IRS (and relevant foreign tax authority with respect to bilateral APAs) agrees to the transfer pricing methodology and related arm's length results of the covered transactions
- Taxpayer executes APA with the IRS

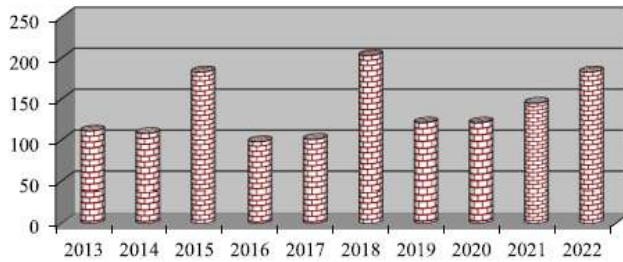
## Annual compliance report and compliance audit

- Taxpayer must file a timely and complete annual report describing its actual operations for the year and demonstrating compliance with the APA's terms
- Taxpayer can consider filing an application for renewal of the APA

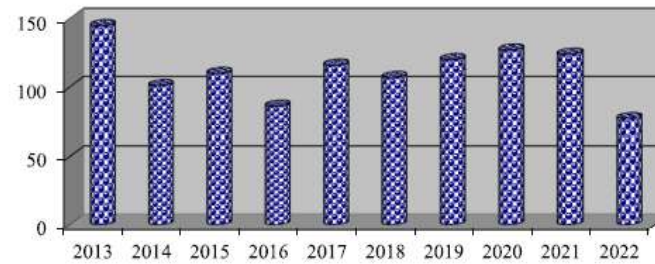
# IRS APA statistics



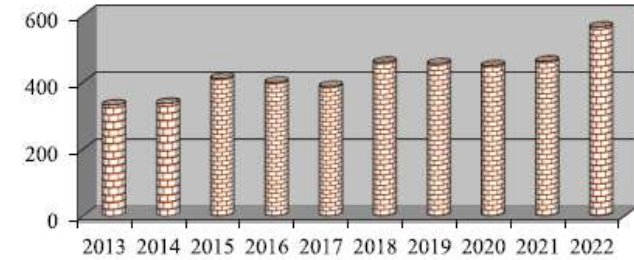
**Applications Filed  
2013-2022**



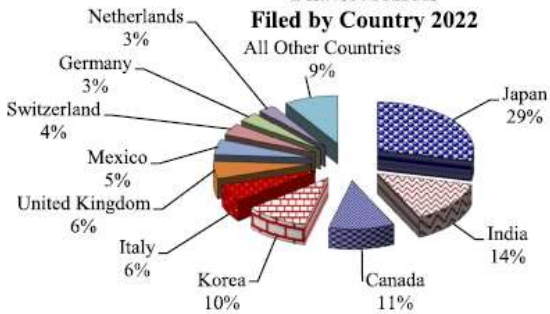
**APAs Executed  
2013-2022**



**Pending APAs  
2013-2022**



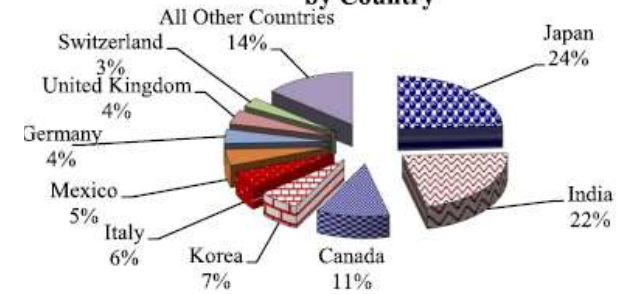
**Bilateral APAs  
Filed by Country 2022**



**Bilateral APAs  
Executed by Country 2022**



**Pending Bilateral APAs  
by Country**

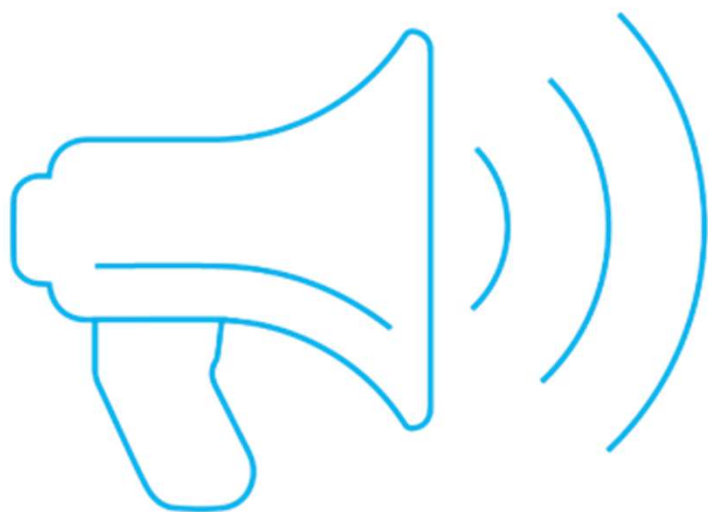


Source: Announcement and Report Concerning Advance Pricing Agreements, APMA Program, March 27, 2023.



# Recent updates to the APA process

## Memorandum for treaty and transfer pricing operations employees



- IRS issued interim guidance in a memorandum on April 25, 2023
- APA requests are now subject to a more robust screening process
- The new procedures focus on the early phases of the APA process, meaning prior to acceptance into the APA program
- The guidance outlines the procedures IRS employees must follow while performing a review of the pre-filing material submitted and an APA submission



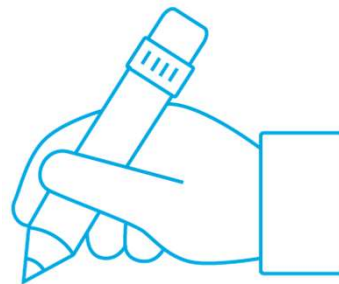


*This guidance also is not intended to limit or decrease the number of APA requests accepted by APMA. Rather, its goal is to improve the quality and timeliness of APMA's APA program by providing an early mechanism for identifying potential roadblocks to successfully concluding a proposed APA and opportunities for other paths to certainty.*

IRS Memorandum for treaty and transfer pricing operations employees. April 25, 2023.

## Implications of the interim guidance

- The interim guidance appears to lay out a lengthy and more selective approach to APA selection
- These reviews represent just another step toward obtaining an APA — now a more rigorous step. APMA may still decline an APA request and recommend an alternative workstream in later stages of the APA process
- The guidance should not deter taxpayers from seeking a new APA or a renewal of an existing APA, given the IRS' statement
- APAs will continue to serve as a key path for providing certainty on transfer pricing issues prospectively





# Alternatives to the APA process

## Mutual Agreement Procedure (MAP) proceeding

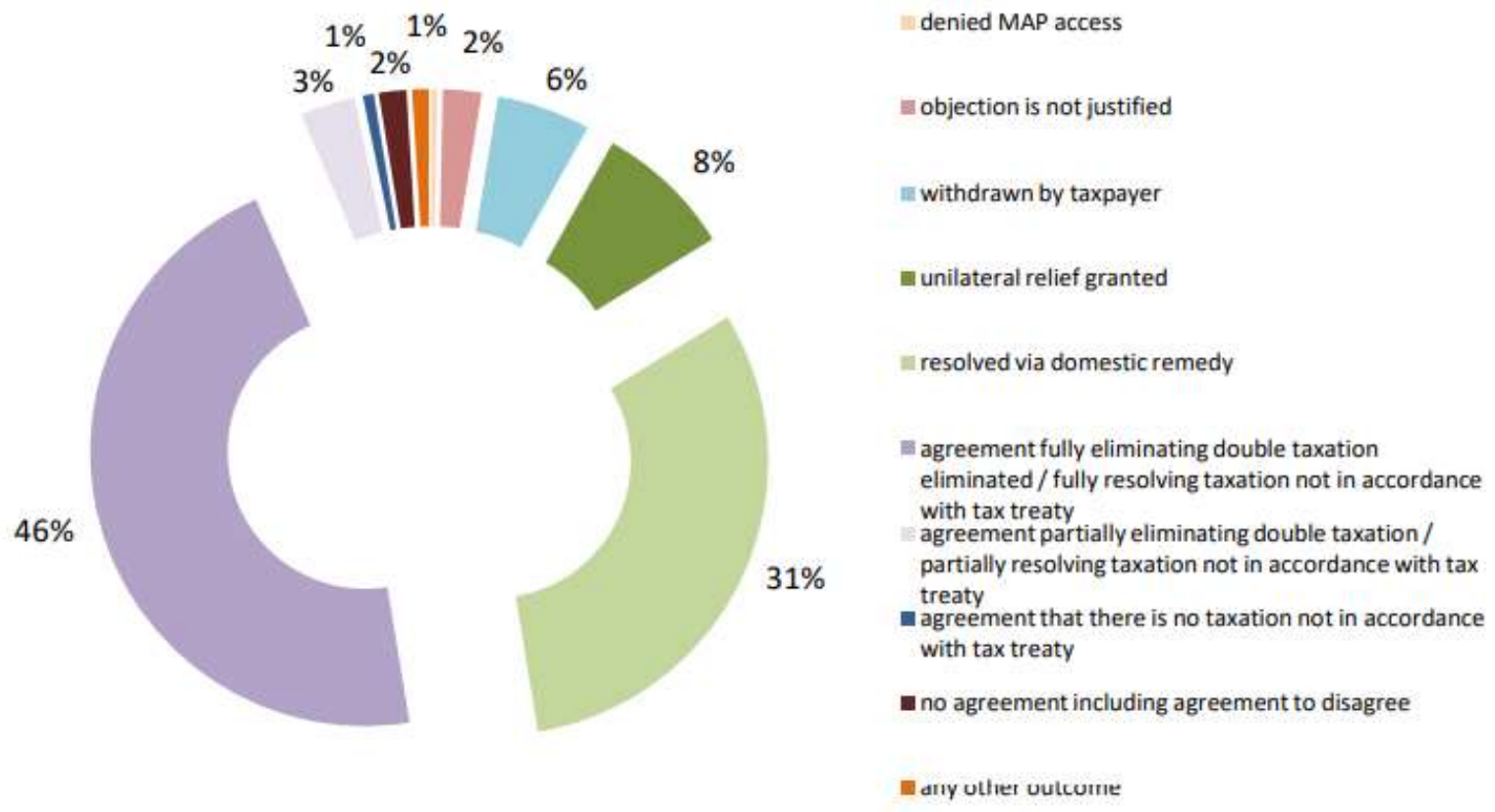
### Overview

- The mutual agreement procedure articles of U.S. tax treaties grant taxpayers the right to request the assistance of the U.S. competent authority when the taxpayer believes that the actions of the United States or a treaty country result or will result in the taxpayer being subject to taxation not in accordance with the applicable U.S. tax treaty.
- This situation typically arises because of U.S. or foreign-initiated adjustments resulting from an examination but can arise from other U.S. or foreign-initiated actions (such as withholding of tax by a withholding agent) or from a taxpayer-initiated position.
- The procedure may result in the adjustment being withdrawn, the corresponding competent authority providing correlative relief, or both.

### Implications

- Resolves issues of double taxation in prior years
- Offers an avenue to resolve statute-barred years
- Provides a less costly alternative to an APA
- Does not resolve issues of double taxation in prospective years
- MAP request must be filed each year for ongoing disputes

# OECD – U.S. MAP outcomes for transfer pricing cases (2021)

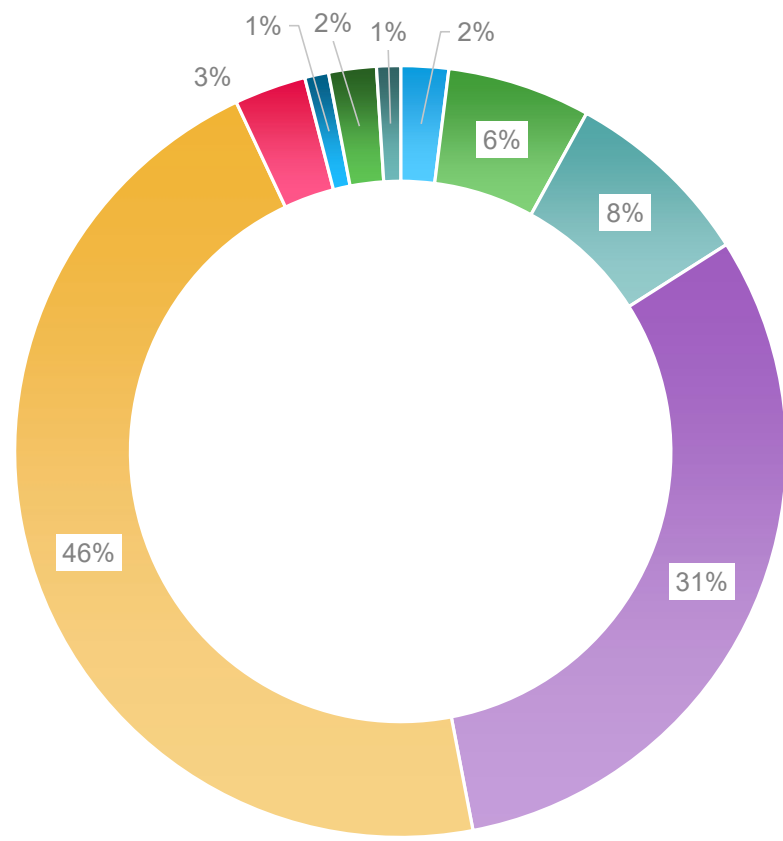


Source: 2021 Mutual Agreement Procedure Statistics (United States), OECD.



KL15  
VI.6  
KL17  
VI.8  
KL10  
KL20

# OECD – U.S. MAP outcomes for transfer pricing cases (2021)



- Objection is not justified
- Withdrawn by taxpayer
- Unilateral relief granted
- Resolved via domestic remedy
- Agreement fully eliminating double taxation eliminated/fully resolving taxation not in accordance with tax treaty
- Agreement partially eliminating double taxation/partially resolving taxation not in accordance with tax treaty
- Agreement that there is no taxation not in accordance with tax treaty
- No agreement including agreement to disagree
- Any other outcome

Source: 2021 Mutual Agreement Procedure Statistics (United States), OECD.



## International compliance assurance program (ICAP)

### Overview

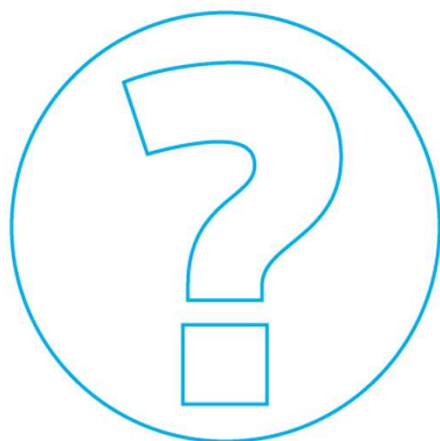
- A voluntary program for taxpayers seeking certainty with respect to their intercompany transactions
- Offers a multi-country, simultaneous review of uncontroversial transfer pricing arrangements under a risk assessment approach
- The taxpayer will receive an outcome letter containing the results of the tax administrations' risk assessment and assurance of the covered risks for the covered periods

### Implications

- OECD views ICAP as providing a cost-efficient way to prevent disputes *before* adjustments and entrenched positions taken by avoiding double tax rather than fixing it after the fact (e.g., reduces the volume of MAP cases)
- Releases audit resources by vetting low-risk transactions
- Releases APA resources for most difficult cases
- Does not provide the legal certainty of an APA, but rather practical certainty

# International tax planning opportunities

## When to seek an APA?



- You are risk-adverse and would like to gain certainty with respect to your intercompany transactions
- You are frequently (or likely to be) under audit in a foreign jurisdiction (or the United States)
- In connection with your international tax planning:
  - Business restructurings and/or acquisitions
  - Entering into a cost sharing arrangement
  - Contributions or sales of intangible property
  - Changes to transfer pricing policies

THANK YOU FOR  
YOUR TIME AND  
ATTENTION





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