

Australia Dispute Resolution Profile

(Last updated: 21 June 2019)

General Information

- **Australian tax treaties are available at:**

<https://treasury.gov.au/tax-treaties/income-tax-treaties/>

- **MAP request should be made to:**

APA / MAP Program Management Unit
Public Groups and International
Australian Taxation Office
GPO Box 9977
Brisbane QLD 4001

Also see:

<https://www.ato.gov.au/general/international-tax-agreements/in-detail/australian-competent-authority/>

- **APA request should be made to:**

As above.

s/n		Response	Detailed explanation	Where publicly available information and guidance can be found
A. Preventing Disputes				
1.	Are agreements reached by your competent authority to resolve difficulties or doubts arising as to the interpretation or application of your tax treaties in relation to issues of a general nature which concern, or which may concern, a category of taxpayers published?	See detailed explanation	The specifics of individual taxpayers are not published. The decision to publish agreements reached under Article 25(3) or equivalent relating to the interpretation or application of a tax treaty in relation to an issue of a general nature which does or may concern a category of taxpayers is made on a case by case basis depending on the perceived need for clarification of that topic.	PS LA 2001/8 ATO website
2.	Are bilateral APA programmes implemented? If yes:	Yes	Law Administration Practice Statement PSLA 2015/4 Advance Pricing Arrangements provides guidance on the APA program.	PS LA 2015/4
a.	<ul style="list-style-type: none"> Are roll-back of APAs provided for in the bilateral APA programmes? 	Yes	Transfer pricing issues relating to income years prior to the APA should be treated as collateral issues. One option to resolve such collateral issue maybe to extend the application of the APA methodology to prior years. Any decision on whether roll back for years prior to an APA is made on a risk assessment basis.	PS LA 2015/4 Section 24
b.	<ul style="list-style-type: none"> Are there specific timeline for the filing of an APA request? 	See detailed explanation	APA renewals should be lodged at least six months before the existing APA expires or before the commencement of the APA covered period for a new request. Although the relevant guidelines do not provide an exact timeline for the filing of an APA application, the intent of the ATO is to apply APA program on a prospective basis.	ATO website

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c.	<ul style="list-style-type: none"> Are rules, guidelines and procedures on how taxpayers can access and use bilateral APAs, including the specific information and documentation that should be submitted in a taxpayer's request for bilateral APA assistance, publicly available? 	Yes	Both PSLA 2015/4 and the ATO website provide guidance on what information should be submitted in an APA request.	PS LA 2015/4 ATO website
d.	<ul style="list-style-type: none"> Are there any fees charged to taxpayers for a bilateral APA request? 	No	-	-
e.	<ul style="list-style-type: none"> Are statistics relating to bilateral APAs publicly available? 	Yes	Numbers and types of the APAs in place for the last seven income years are published on the ATO website.	ATO website
3.	Is training provided to your officials involved in the auditing /examination of taxpayers to ensure that any assessments made by them are in accordance with the provisions of your tax treaties?	Yes	Online and in-class learning materials on international tax treaties are available internally. Staff training materials are not publicly available.	-
4.	Is other information available on preventing tax treaty-related disputes?	Yes	The ATO publishes general information on its website aimed at preventing treaty related disputes. These include Taxpayer Alerts, APA related PSLAs, speeches delivered by Commissioners and the Risk Differentiation Framework (the ATO risk assessment framework).	ATO website

Notes:

- An APA is an “arrangement that determines, in advance of controlled transactions, an appropriate set of criteria (e.g. method, comparables and appropriate adjustments thereto, critical assumptions as to future events) for the determination of the transfer pricing for those transactions over a fixed period of time”. (see definition of APA in the *OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations* (“Transfer Pricing Guidelines”).)
- Situations may arise in which the issues resolved through an APA are relevant with respect to previous filed tax years not included within the original scope of the APA. The concept of “roll-back” is further elaborated in paragraph 4.136 of Section F (Advance pricing arrangement) of Chapter IV of the Transfer Pricing Guidelines and in paragraph 69 of Section D.4.2 (Possible retrospective application (“Roll back”)) of the Annex to Chapter IV (Guidelines for Conducting Advance Pricing Arrangements under the Mutual Agreement Procedure (“MAP APAs”)) of the Transfer Pricing Guidelines. Simply put, the “roll-back” of the APA is understood to mean that the outcome of the APA is applied to previous filed tax years not included within the original scope of the APA.

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B. Availability and Access to MAP				
5.	Are transfer pricing cases covered within the scope of MAP?	Yes	The ATO guidance material covers both transfer pricing and non-transfer pricing cases.	<u>Mutual Agreement Procedure</u>
6.	Are issues relating to the application of treaty anti-abuse provision covered within the scope of MAP?	Yes	-	<u>BEPS Action Plan Update</u>
7.	Are issues relating to the application of domestic anti-abuse provision covered within the scope of MAP?	Yes	Taxpayers are entitled to access MAP in relation to tax arising from the application of domestic anti-abuse rules. However, it may not be possible to resolve a case under MAP to the extent that it involves the application of Australia's domestic anti-abuse provisions given that Australia's tax treaty provisions are subject to those rules.	<u>Mutual Agreement Procedure</u> <u>Part IVA Income Tax Assessment Act 1936</u>
8.	Are issues where there is already an audit settlement between the tax authority and the taxpayer covered within the scope of MAP?	Yes	MAP can be requested for matters which are the subject of a settlement agreement with the ATO. However, settlement agreements are intended to resolve the matters in dispute for both parties and there may be consequences under the settlement deed for continuing the dispute through the MAP process.	<u>Mutual Agreement Procedure guidelines</u>

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9.	Are double taxation cases resulting from bona fide taxpayer initiated foreign adjustments covered within the scope of MAP?	Yes	<p>The ATO will consider a self-initiated adjustment to be made in good faith if:</p> <ul style="list-style-type: none"> - it reflects a good faith effort on the taxpayer's part to ensure that they are reporting their income or profits correctly - the taxpayer has fulfilled properly and in a timely manner all their taxation obligations related to the income or profits under the domestic tax laws of both jurisdictions. 	<u>Mutual Agreement Procedure guidelines</u>
10.	Are there any other treaty related issues not covered under s/n 5 to 9 which are not within the scope of MAP?	No	-	-
11.	Are taxpayers allowed to request MAP assistance in cases where the taxpayer has sought to resolve the issue under dispute via the judicial and administrative remedies provided by the domestic law of your jurisdiction?	Yes	The MAP provides an additional dispute resolution process to those available under the domestic legislation of Australia and other jurisdictions. A taxpayer can request MAP regardless of the remedies provided by domestic law. If a taxpayer is pursuing domestic law remedies, the ATO will try to progress the MAP case as much as is possible, depending on the circumstances of the case.	<u>Mutual Agreement Procedure guidelines</u>
12.	Are taxpayers allowed to request for MAP assistance in cases where the issue under dispute has already been decided via the judicial and administrative remedies provided by the domestic law of your jurisdiction?	Yes	Where a decision of the Administrative Appeals Tribunal or an order of the Federal Court has been made, the competent authority will abide by that decision.	<u>Mutual Agreement Procedure guidelines</u>

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13.	Are rules, guidelines and procedures on how taxpayers can access and use MAP, including the specific information and documentation that should be submitted in a taxpayer's request for MAP assistance, publicly available?	Yes	All relevant guidelines regarding MAP assistance are publicly available on the ATO website.	<u>Mutual Agreement Procedure</u> ATO <u>website</u>
14.	Are there specific timeline for the filing of a MAP request?	Yes	Most of Australia's DTAs impose a 3 year limit to apply for MAP assistance but this varies depending on the specific DTA.	<u>Mutual Agreement Procedure</u>
15.	Are guidance on multilateral MAPs publicly available?	Yes	The ATO can be part of multilateral negotiations when the taxpayer has presented separate and concurrent MAP requests under each tax treaty involved and each jurisdiction has accepted the MAP request presented to them and every jurisdiction has a tax treaty providing for MAP with each of the other jurisdictions.	<u>Mutual Agreement Procedure</u>
16.	Are tax collection procedures suspended during the period a MAP case is pending?	See detailed explanation	If collecting tax during the MAP process may result in double taxation, the ATO will defer legal action for recovery of those amounts, including any GIC, until an agreed future date (usually the date that the MAP is concluded), unless: <ul style="list-style-type: none"> – there is a risk to revenue – the taxpayer has other liabilities unpaid after the due date, or – the taxpayer has failed to meet other tax obligations when required. 	<u>Mutual Agreement Procedure</u>

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17.	Are there any fees charged to taxpayers for a MAP request?	No	-	-
18.	Is there any other information available on availability and access to MAP?	Yes	-	<u>Mutual Agreement Procedure</u>

s/n		Response	Detailed explanation	Where publicly available information and guidance can be found
C. Resolution of MAP Cases				
19.	Are there any model timeframes for the steps taken by your competent authority from the receipt of a MAP case to the resolution of the case provided to taxpayers?	See detailed explanation	The ATO has committed to resolving cases within an average time frame of 2 years.	<u>Mutual Agreement Procedure</u>
20.	Are statistics relating to the time taken to resolve MAP cases publicly available?	Yes	Statistics on average cycle time for MAP cases is available on the OECD website.	<u>OECD Country Profile</u>
21.	Is interest or penalties resulting from adjustments made pursuant to a MAP agreement waived or dealt with as part of the MAP procedure?	See detailed explanation	Australian DTAs specifically exclude penalty or interest relating to tax from the definition of “tax”, thereby preventing such amounts from being eligible for double tax relief under a DTA. Any applicable interest and penalties begin to accrue when a liability becomes due and payable under the relevant Australian taxation law. The ATO policy is that where recovery of a liability has been deferred until the completion of the MAP, interest on that liability will be remitted.	See: General Definitions Article in the Australian DTAs <u>Mutual Agreement Procedure</u>
22.	Are the roles and responsibility of the MAP office publicly available, for example, is the mission statement of the MAP office available in the <i>annual</i> report of the organisation?	Yes	The ATO has a dedicated APA / MAP Program Management Unit which administers the MAP program. The roles and the purpose of the APA / MAP Program Management Unit and other participants in the MAP process are detailed on the ATO website. They are also reflected in the relevant Law Administration Practice Statements	<u>Mutual Agreement Procedure</u> <u>PSLA 2015/4</u>

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23.	<p>Is MAP arbitration a mechanism currently available for the resolution of tax treaty related disputes in any of your tax treaties?</p> <p>If not:</p>	Yes	Australia has arbitration clauses in the Swiss, New Zealand and German DTAs. Australia has also ratified the Multilateral Instrument (MLI) under which it has opted for mandatory binding arbitration. Arbitration may therefore be available where our treaty partners have also opted for arbitration.	Australian Income Tax Treaties
a.	<ul style="list-style-type: none"> Are there any legal limitations in your domestic law (for example in your constitution) to include MAP arbitration in your tax treaties? 	No	-	-
b.	<ul style="list-style-type: none"> Does your treaty policy allow you to include MAP arbitration in your tax treaties? 	Yes	Australia is committed to including a mandatory binding arbitration clause in bilateral tax treaties.	Treasurer's Media Release No. 3 of 2015
24.	<p>Is the explanation of the relationship between the MAP and domestic law administrative and judicial remedies publicly available?</p> <p>If yes:</p>	Yes	-	Mutual Agreement Procedure
a.	<ul style="list-style-type: none"> Does the guidance specifically address whether the competent authority considers that it is legally bound to follow a domestic court decision in the MAP or will not deviate from a domestic court decision as a matter of administrative policy or practice? 	Yes	Where a decision of the Administrative Appeals Tribunal or an order of the Federal Court has been made, the competent authority will abide by that decision.	Mutual Agreement Procedure
25.	Are taxpayers allowed to request for multi-year resolution through the MAP of recurring issues with respect to filed tax years?	Yes	The ATO would seek the multi-year resolution of a recurring issue.	-

s/n		Response	Detailed explanation	Where publicly available information and guidance can be found
26.	Do all your jurisdiction's tax treaties contain a provision which would oblige your jurisdiction to make corresponding adjustments or to grant access to the MAP with respect to the economic double taxation that may otherwise result from a primary transfer pricing adjustment (i.e. is paragraph 2 of Article 9 of the OECD Model Tax Convention or the UN Model Double Taxation Convention included in all of your jurisdiction's tax treaties)?	No	Where a DTA does not contain the equivalent of paragraph 2 of Article 9 of the OECD Model Tax Convention then section 24 of the International Tax Agreements Act (1953) allows for corresponding adjustments to be made.	<u>Mutual Agreement Procedure</u> <u>Australian Income Tax Treaties</u> <u>International Tax Agreements Act (1953)</u>
27.	Is there any other information available on resolution of MAP cases?	Yes	-	<u>Mutual Agreement Procedure</u>

s/n		Response	Detailed explanation	Where publicly available information and guidance can be found
D. Implementation of MAP Agreements				
28.	Where the agreement reached by your competent authority through the MAP process leads to additional tax to be paid by your taxpayer, is there publicly available information on the timeframe the taxpayer could expect its tax position to be amended to reflect the agreement reached by the competent authority and/or for the additional tax to be paid?	Yes	Internal ATO benchmark for resolution of MAP cases is 2 years, from commencement to amendment of the tax position of the taxpayer to reflect any agreement.	<u>Mutual Agreement Procedure</u>
29.	Where the agreement reached by your competent authority through the MAP process leads to a refund of the tax due or paid by your taxpayer, are there publicly available information on the timeframe the taxpayer could expect its tax position to be amended to reflect the agreement reached by the competent authority and/or for a refund of the tax paid?	Yes	Internal ATO benchmark for resolution of MAP cases is 2 years, from commencement to amendment of the tax position of the taxpayer to reflect any agreement.	<u>Mutual Agreement Procedure</u>
30.	Are all mutual agreements reached through MAP implemented notwithstanding any time limits in your domestic law?	See detailed explanation	Most of Australia's DTA MAP articles include a clause allowing the implementation of the MAP decision regardless of the time limit contained in the domestic law. Where a DTA does not contain such a provision then domestic time frames will apply. Note, corresponding adjustments can be made at any time and there is an unlimited amount of time to amend an assessment as the result of an objection.	<u>Mutual Agreement Procedure</u>
31.	Is there any other information available on the implementation of MAP agreements?	Yes	-	<u>Mutual Agreement Procedure</u>