



TAXAND GLOBAL GUIDE TO APAs & CAs



As tax authorities worldwide seek to increase tax takes to beat the downturn, multinationals face further scrutiny. Whether planning a complex transaction or reassessing your transfer pricing position, understanding Advance Pricing Agreement programmes and Competent Authority procedures is essential. Taxand’s Global Guide to APAs and CAs – split by region – provides you with an at-a-glance view of the key legislation in place. Take a look to inform your risk management strategy. You can save time and money, plan against audits and prevent double taxation if you’re in the know.

	FRANCE	GERMANY	NETHERLANDS	SPAIN	SWITZERLAND	UNITED KINGDOM
	1) ADVANCE PRICING AGREEMENTS					
Advance Pricing Agreement programme (APA) in place	Yes	Yes	Yes	Yes	No	Yes
Programme guidelines	Article L 80B 7° of the French Tax Procedure Code Further comments in Instruction 4-A-11-05	a) Unilateral ❖ Para 89 German General Tax Code ❖ Tax Decree from November 30, 2007 ❖ (Federal Tax Gazette 2007, page 820) b) Bilateral / Multilateral ❖ Para 178a German General Tax Code ❖ Clause 6.1.3.1. ff. Tax Release from April 12, 2005 - Federal Tax Gazette 2005, page 570 ff	Decree of March 30, 2001, nr. IFZ2001/295M updated by Decree of August 21, 2004, nr. IFZ2004/680M	Article 16.7 of the Revised Corporate Income Tax Law and Chapter VI of the Royal Decree 1793/2008 (arts. 22 - 29 nonies)	No	Sections 85-87 of Finance Act 1999 (and Statement of Practice 3/99)

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APA types	<p>a) Unilateral under specific conditions (no tax treaty, small business, numerous similar transactions or specific case)</p> <p>b) Bilateral preferred (no multilateral as such but can be reached through several bilateral procedures)</p>	<p>a) Unilateral</p> <p>b) Bilateral / Multilateral</p>	<p>a) Unilateral</p> <p>b) Bilateral / multilateral</p>	<p>a) Unilateral</p> <p>b) Bilateral / Multilateral</p>	<p>a) Unilateral</p> <p>b) Multilateral / Bilateral</p>	<p>a) Unilateral</p> <p>b) Multilateral / Bilateral</p>
Issues covered	<ul style="list-style-type: none"> ❖ All transfer pricing issues (goods, services, intangibles) ❖ Either for consistent transfer pricing policies or for specificities in the policy 	<p>All facts with tax implication(s) not yet realised - including but not restricted to transfer pricing, cost sharing arrangements, determination and attribution of profits of permanent establishments</p>	<ul style="list-style-type: none"> ❖ Treatment of intra-group sales ❖ Treatment of intra-group services ❖ Treatment of “supporting services” ❖ Treatment of contract research ❖ Cost contribution arrangement ❖ Attribution of profit to a permanent establishment 	<p>Valuation of all types of related transactions</p> <ul style="list-style-type: none"> ❖ Cost sharing arrangements and intra-group service agreements ❖ Attribution of profits to permanent establishments ❖ Intangibles Valuation ❖ Thin capitalisation ratio 	<ul style="list-style-type: none"> ❖ Transfer pricing ❖ Cost sharing ❖ Attribution of profit to a permanent establishment 	<ul style="list-style-type: none"> ❖ General transfer pricing of intra-group provisions under Schedule 28AA of the 1988 Income and Corporation Taxes Act ❖ This includes permanent establishment and branch allocation issues assuming the provision meets the required level of materiality/complexity to qualify for the APA programme
Length of APA term	Between 3 and 5 years	Not defined - should range between 3-5 years	Usually 4 or 5 years but negotiable	Up to 4 years, computed from the fiscal year following the date in which the APA was approved. To said duration a limited rollback period may be added (see further information below.)	No	Typically 3-5 years
Rollbacks allowed	No	The APA is only applicable for the case under discussion	Yes, provided that the taxable income of the company is not reduced in these years as a result of the rollback	Yes (the APA may be applicable in the same tax year in which it is approved and the previous one, provided that the period for voluntary filing of the corresponding tax return has not elapsed at approval date)	Yes (for tax years not yet assessed)	Yes

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Renewals allowed	Yes	Yes	Yes	Yes	Yes	Yes - Taxpayer may request renewal of an APA normally not later than 6 months before the expiry of its current term
Annual compliance reports	Yes	No	Taxpayer is required to indicate that an APA is concluded when filing the tax return	Yes, to be filed with the annual tax return	No	Will be specified in the agreement and will normally require annual compliance/adherence reports to coincide with tax return filing
Filing deadlines	APA should be presented to the tax authorities at least 6 months prior to the first fiscal year it concerns so that this fiscal year can be covered by the agreement	Request must be submitted prior to the realisation of the transaction for which the APA is asked	No	Not specified for first proposed APA. For APA extension, the request must be made before the six months prior to the expiration of the original APA	No	Applications are sought before the end of the first accounts period intended to be covered by the APA; applications are also possible where a tax enquiry is underway
User fees	No	<ul style="list-style-type: none"> ❖ For Unilateral APAs - no differing rules for Small Business. ❖ Value is decisive and is defined as the difference between a positive and an adverse decision. Fee ranges from EUR 121 and EUR 91,456. In the absence of such value, fees of EUR 50 for each 1/2 hour are assessed. ❖ For Bilateral or multilateral APAs ❖ First APA EUR 20,000 ❖ Renewal EUR 15,000 ❖ Changes during the process of an APA EUR 10,000 <p>(Cont. on pg 4)</p>	No	No	Marginal administrative fees possible	The UK tax authorities charge no entry or expenses fees for the conclusion of an APA

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	1) ADVANCE PRICING AGREEMENTS					
User fees (Cont.)		(Cont. from pg 3) ❖ On prior request fees can be reduced ❖ Small Business: ❖ APA EUR 10,000 ❖ Renewal EUR 7,500 ❖ Changes EUR 5,000 ❖ On prior request fees can be reduced				
Withdrawal	Although this is not specified in the law, the taxpayer can withdraw at anytime during the APA process	Possible at any time of the process - but user fees are not refunded (payable prior to the APA process) for bilateral or multilateral APAs. They can be reduced in the case of unilateral APAs.	Taxpayer can withdraw at anytime during APA process	Taxpayer can withdraw at anytime during APA process	Taxpayer can withdraw at anytime during APA process	Taxpayer can withdraw at anytime before final agreement
Further information		Definition of Small Business depends on the magnitude of intragroup transactions		Maximum length of the unilateral APA approving process: 6 months from filing date. In the case of bilateral / multilateral APAs the approval process may vary.	For bilateral and multilateral APAs the APA has to be initiated in another country and then be presented to the Swiss Federal Tax Administration	An efficient APA programme typically takes less than 12 months to conclude (from the initial expression of interest.) HMRC reserves the right to turn down applications for APAs which do not fulfil certain criteria (for example if the provision is insufficiently complex.)
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	2) COMPETENT AUTHORITY PROCEDURES					
Programme guidelines	❖ Relevant double tax treaty ❖ European arbitration convention for companies located in Europe	Para 2, 175a and 178a German General Tax Code, German Tax Treaties	No formal competent authority procedures	Royal Decree 1794/2008	No	Section 815AA of the 1988 Income and Corporation Taxes Act

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	2) COMPETENT AUTHORITY PROCEDURES					
Filing deadlines	Depends on the Tax Treaties	Depends on the Tax Treaties	Request for competent authority procedure must be filed within 3 years of notification of the tax assessment, unless a treaty provides otherwise	<ul style="list-style-type: none"> ❖ EU countries: three years from the first notification of the tax assessment giving rise to double taxation (Arbitration Convention) ❖ Non EU Countries: varies by treaty partner 	No	Case must be presented within 6 years of the end of the chargeable period to which the case relates or any longer period specified in a particular treaty
Filing fees	No	Same as for bilateral or multilateral APAs	No	No	Marginal administrative fees possible	No
Further information	As opposed to Mutual Agreement Procedure, European arbitration convention procedure results in an elimination of the double taxation derived from the transfer pricing reassessment				<p>Unilateral APAs are granted by the tax authority competent for the tax assessment.</p> <p>Bilateral and multilateral APAs are negotiated and granted by the Swiss Federal Tax Administration.</p>	Companies can present their case to the UK competent authority whenever they feel double taxation is likely to be in point and protective presentations can be made to comply with the time limits. However a resolution under the mutual agreement procedure will not, other than in exceptional circumstances, be actively pursued until the amount of tax at stake has been finalised.



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Taxand's team of transfer pricing specialists combines leading advisors from nearly 50 countries working together to help you meet your obligations while achieving meaningful tax efficiencies. To discover how Taxand can deliver your global transfer pricing advantage, please contact your nearest Taxand advisor.

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