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KPMG Picks Its 2023 Advance Pricing Agreement Award Winners

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For the first time ever, the OECD released country-specific APA statistics for 2023 that provide insight on the times required to complete APAs and the size of jurisdictions' APA programs, including many jurisdictions that do not otherwise publish APA statistics, say KPMG practitioners.

On November 15, 2024, the OECD, released, for the first time ever, country-specific advance pricing agreement (APA) [statistics](#) as part of its annual Tax Certainty Day – an event that included the bestowing of mutual agreement procedure (MAP) and APA [awards](#) for jurisdictions with notable achievements in the field of tax certainty. The APA statistics are less detailed than the annual MAP [statistics](#) released by the OECD, but they offer an invaluable snapshot into the size of APA inventories around the world and the time required to complete APAs in the reporting jurisdictions, including in many jurisdictions that do not otherwise publish APA statistics. When viewed in tandem with the 2023 MAP statistics, the APA statistics offer significant insights to businesses as they consider their approach to managing their transfer pricing risks.

Overview

The statistics highlight some important developments in the MAP / APA space. While MAP inventories fell during 2023 by 3%, global APA inventories increased by 4% pending APAs at the end of the year, illustrating the ongoing importance of tax certainty to taxpayers. The OECD reported the number of post-2015 transfer pricing MAP cases at 2,770. The number of outstanding APA cases appear significantly higher, at 4,080; however, this is a consequence of the double counting of bilateral (or multilateral) APAs in each jurisdiction relevant to the case. Unlike with the post-2015 MAP statistics, the

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OECD reporting framework does not endeavor to match APA cases by treaty partner (and does not even require reporting jurisdictions to use the same reporting year).

The vast majority of APA cases closed were successful, with 88% of APA cases closed during 2023 granted by the competent authorities, but the statistics also reveal some potentially problematic jurisdictions. The first ever APA award – Focus on Dispute Prevention – was awarded to Japan for prioritizing APAs, with 84.7% of its treaty-based transfer pricing disputes caseload being APAs as opposed to MAP cases. Singapore and Korea were the runners up, both with over 60% of their treaty-based transfer pricing disputes docket comprising APAs.

While it is no surprise that Japan earned the first ever APA award, taking a deep dive into the APA statistics sheds light on how some less prominent APA programs are performing. In this article, we propose additional APA awards – and a couple of demerits – based on the statistics.

Most Productive: Most APAs Granted

Consistent with its award, Japan granted the most APAs during the reporting period: 164, an achievement that is all the more impressive in view of the relatively lean Japanese competent authority team, which last year comprised 46 individuals working on APAs and MAP cases. Japan was closely followed by the US with 132 APAs granted. Japan and the US granting the highest volume of APAs during the reporting period validates the strong historical relationship between these competent authorities, which has allowed them to productively negotiate APAs for over three decades. In 2023, 32% of the bilateral APAs executed by the US were with Japan. Japan and the US are also among the mature APA programs, allowing for their docket to include a substantial number of renewal APAs (47% of US APAs executed in 2023 were renewals), which permits more efficiency in closing cases. As honorable mentions, Korea and Switzerland both granted a significant number of APAs during the reporting period (85 and 75, respectively).

Dealmakers: Highest Percentage of APAs Granted to Starting Inventory

We examined the percentage of APAs granted relative to 2023 starting inventory for jurisdictions with a starting inventory of at least 20 APAs. Denmark and Indonesia had the highest percentages, granting APAs amounting to over 40% of their 2023 starting inventory during the reporting period. While Denmark and Indonesia had more manageable starting inventories of 44 and 48, respectively, China might boast a more impressive metric, closing out 37.2% of its starting inventory of 94 (all successfully).

While Indonesia was historically a difficult competent authority to engage with, these statistics are an encouraging sign of the competent authority's commitment to tax certainty and efficiency. Successful APA programs can help taxpayers take preventative measures to avoid disputes and are especially valuable in jurisdictions like Indonesia, where transfer pricing penalties can be draconian. Perhaps not surprisingly, it appears that Japan (yes, Japan again) was the jurisdiction with whom they had the most productive relationship.

As honorary mentions, two jurisdictions were able to close out their entire starting inventory during the year: Liechtenstein and Lithuania. While these APA programs are small, with only one APA in starting inventory, it is nonetheless impressive.

Emerging Epicenters: Highest New Applications as a Percentage of Opening Inventory

The statistics for other jurisdictions with less mature APA programs show significant interest in APAs – which means competent authorities will need to devote substantial resources to tax certainty to stay abreast of demand. For jurisdictions with over 10 cases started in the reporting period, Romania, Finland, and Spain had the highest percentage of new applications as a percentage of opening inventory (52.2%, 51.4%, and 46.9%, respectively).

Speed Merchants and Need for Speed: Fastest and Slowest APA Timelines

The average time taken to grant APAs during the reporting period was 36.8 months, about seven months longer than the average time to close a MAP during 2023 (29.5 months). Of course, there is variability; the average time to close APAs is dependent on the jurisdictions involved, the maturity of their APA programs, and their competent authority resources. It is also worth noting that MAP cases will typically proceed from domestic audits, and hence the overall time taken for businesses to conclude APAs is likely to compare favorably to the time taken to complete a domestic audit and then conclude an APA.

Taking a deeper look at jurisdictions with over 10 APAs closed during the reporting period, certain jurisdictions excelled at closing out APAs in a timely manner. Denmark stands out as the “speed merchant” with an average time of 23 months, exceeding the 24-month target envisioned by the OECD in its Bilateral Advance Pricing Arrangement Manual as a long-term goal. Following close behind is China, with an average time of 25 months, and Switzerland and Singapore with average times of 26 months – both of which beat the OECD’s shorter term goal of 30 months for APAs.

Other jurisdictions’ statistics indicate a “need for speed” when it comes to closing APAs. Ireland and India both had an average time to close APAs over 60 months (72 and 62 months, respectively). In both cases, it is necessary to look beyond the numbers. The Irish statistic comes from a single case, and Irish APAs generally tend to involve more complex structures, often with challenging intangibles-related issues and sometimes with multilateral dimensions. It is therefore not surprising that they take longer to resolve; the important thing is that they do get resolved. The US and Ireland have developed an active and productive docket for dealing with cases, which will no doubt bear fruit in future years’ statistics.

India has had a very productive APA program for many years and has been a key US APA partner since the two competent authorities began accepting bilateral APA requests in 2016. The longer average timeframe for India cases likely stems in part from the need to coordinate APA issues with domestic issues caught up in litigation, which may result in a handful of cases that are on pause pending other developments. This fact pattern may also be behind India’s outcome statistics: 32 APAs were granted last year, while 18 were closed for “other reasons” – most or all likely withdrawn by the taxpayer either at the suggestion of one or both competent authorities, or on account of domestic developments. Indian APAs may take time but demand for bilateral APAs is growing, pulling in cases that previously may have been dealt with as unilateral APAs. Bringing another competent authority into play is important in providing tax certainty and can help achieve better outcomes. We have seen a number of cases where unilateral APA outcomes have been scrutinized by another jurisdiction and perceived to be “over compliant” from an Indian perspective.

Watchlist

Several jurisdictions' statistics show a fairly sizeable starting inventory with little or no APAs granted during the year. Yet with average APA processing times over three years, it isn't fair to fault a competent authority for a lack of progress on the basis of a single year of statistics. As the OECD continues to publish APA statistics annually, trends will no doubt emerge: some countries that currently appear not to be progressing cases will quickly catch up, while others may remain stalled out.

One outlier that does deserve a spot on the watchlist is Vietnam. Although Vietnam listed no APAs as having been rejected in 2023, nine cases were closed for "other reasons" (with none granted) – representing over 30% of Vietnam's opening APA inventory. The OECD's reporting framework clarifies "other reasons" to mean cases withdrawn by the taxpayer, cases where no mutual agreement could be reached, and any others. [Vietnam's statistics](#) include a footnote highlighting that they are currently unable to provide APAs for prior periods, and hence instead of rolling back APAs to prior periods, it is required to close them. The lack of APA roll-back is inconsistent with the [BEPS Action 14 Minimum Standards](#), and so presumably something that Vietnam will be expected to address in future.

Time to Shift Gears? Countries with the Lowest Ratio of APA Cases to MAP Cases

When viewed in tandem with MAP statistics, APA statistics provide insight on countries' overall dockets for treaty-based transfer pricing cases. Among the countries with material MAP dockets, a few stand out as having low ratios of APAs to MAP cases: Austria, Spain, Belgium, Germany, and France, indicating a tendency for disputes to need to be resolved rather than prevented. It is perhaps notable that in the reporting period, Belgium and Spain's APA inventory increased by over 40%, indicating that they are expanding their APA programs, in contrast to France and Germany, where new cases increased by a more modest 30% and 20%, respectively.

Is APA Right for Me?

Ultimately, we expect taxpayers' demand for APAs to continue to grow, as heightened audit risks and the OECD's Global Anti-Base Erosion Model Rules (Pillar Two) have placed a greater premium on tax certainty for taxpayers. How can taxpayers determine if an APA is right for them?

APAs can offer several advantages for taxpayers seeking tax certainty. Taxpayers may contemplate participating in APA programs for some of the following reasons (among others):

- Tax certainty and reduced risk of future disputes with tax authorities;
- Long-term reduced compliance costs; and
- Improved relationships with tax authorities.

The APA statistics offer taxpayers increased visibility into the productivity and efficiency of APA programs in the jurisdictions in which they operate. Looking at trend data is helpful to get a big picture sense of how effectively APA programs are operating at a global or country level, but it sometimes masks the key issues that taxpayers need to be looking at and considering when they think about entering into an APA:

- Nature and complexity of transactions;
- Importance of preventing potential future tax dispute;
- Importance of double tax relief (vis-à-vis opposed to achieving a particular result);
- Track record of both competent authorities; and

- Alternative dispute mechanisms.

Conclusion

While the OECD's APA statistics are not as thorough as the MAP statistics, they do shed a spotlight on APA programs, many of which did not previously publish statistics, and incentivize competent authorities to make dispute prevention measures more effective. The OECD's 2023 APA statistics reveal some notably productive and efficient APA programs, as well as certain countries that have room to grow. Overall, the increased focus on APA programs and the OECD's APA statistics drawing attention to APA programs should contribute to the improvement of APAs, just as publishing MAP statistics has done for dispute resolution.

For taxpayers, the statistics provide helpful insights into the effectiveness of APA programs – and the likelihood that a particular case will be resolved in an efficient and timely manner. If you are contemplating an APA, it is definitely worth reviewing the statistics for the relevant jurisdictions.

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