



March 2019

TAX ADMINISTRATION

Opportunities Exist to Improve IRS's Management of International Tax Dispute Resolution

Accessible Version

GAO Highlights

Highlights of [GAO-19-81](#), a report to the Chairman, Committee on Finance, U.S. Senate

Why GAO Did This Study

With increasing globalization, multinational corporations can take advantage of differences in countries' corporate tax systems to reduce their overall tax liabilities. However, globalization can also lead to disputes about the correct tax liability for U.S. MNCs in different countries. GAO was asked to review how the United States administers the process for resolving international tax disputes when a U.S. MNC disagrees with a tax determination of another country.

This report (1) describes IRS's dispute resolution process, (2) assesses the information IRS provides to taxpayers about the process, and (3) assesses the extent to which IRS evaluates its management of dispute resolutions cases. GAO reviewed IRS guidance on the MAP process, interviewed IRS officials and compared IRS actions to federal standards for internal control and GAO's criteria for a good tax system. GAO analyzed MAP data for cases closed from 2013 to 2017 as well as a stratified random sample of MAP case files.

What GAO Recommends

GAO is making a total of eight recommendations, including that IRS improve the clarity of information on the dispute resolution process, track and use dispute resolution case data, ensure the quality of case data, and analyze trends in dispute case characteristics. IRS agreed with GAO's recommendations and said it will provide detailed corrective action plans.

View [GAO-19-81](#). For more information, contact James R. McTigue at (202) 512-9110 or mctiguej@gao.gov.

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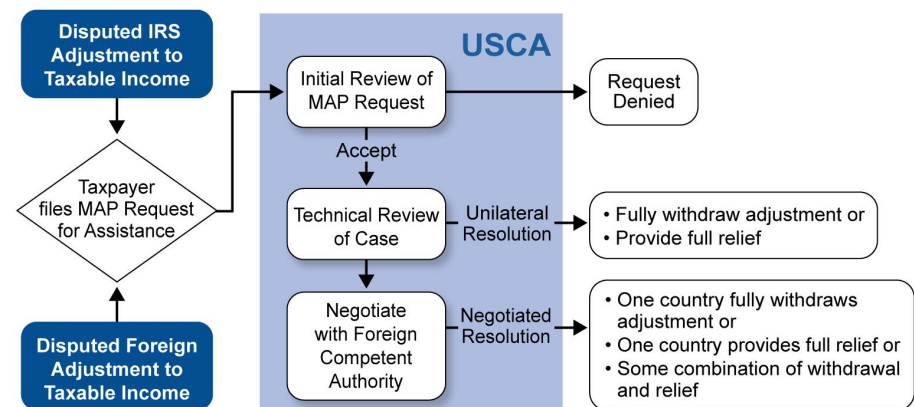
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What GAO Found

A U.S. multinational corporation (MNC) operating in a foreign country is subject to taxes in that country as well as in the United States. The U.S. MNC's tax return may be audited by the United States or the other country. Such audits can result in an adjustment to the U.S. MNC's taxable income that may result in income being subject to tax in both countries. If the U.S. MNC disagrees with the adjustment, it can ask the United States Competent Authority (USCA) within the Internal Revenue Service (IRS) to help resolve the dispute through the mutual agreement procedure (MAP). Generally, disputes are resolved by one country withdrawing some or all of the adjustment and the other country providing other relief to the MNC to address double taxation of income. The following figure provides an overview of the dispute resolution process.

IRS U.S. Competent Authority Mutual Agreement (USCA) Procedure (MAP) Process



Source: GAO. | GAO-19-81

Dispute resolution assistance is available to U.S. MNCs that need it and USCA provides comprehensive technical information on its website on how to request assistance. However, because USCA's website does not provide an overview or plain language guidance on the MAP process U.S. MNCs may not have clear information on how to navigate the process.

USCA has taken a number of steps to ensure efficient management of MAP cases including assigning staff with requisite background and skills to cases according to their complexity and organizing staff into teams that specialize by countries. However, GAO identified a number of weaknesses that impact USCA's management of MAP cases. These include the following

- key data are not tracked and existing data are not used to assess the effective allocation of resources for the program,
- few controls have been established to monitor and ensure the reliability of the data in the case management database, and
- lack of trend analyses on dispute case characteristics that could help inform management decision making and the more efficient operation of the program.

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Abbreviations

APA	Advance Pricing Agreement
AMPA	Advance Pricing and Mutual Agreement Program
IRS	Internal Revenue Service
MA	mutual agreement procedure
MNC	multinational corporations
OECD	Organisation for Economic Co-operation and Development
TJCA	The Tax Cuts and Jobs Act of 2017
USCA	United States Competent Authority

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March 13, 2019

The Honorable Charles E. Grassley
Chairman
Committee on Finance
United States Senate
Dear Mr. Chairman:

As countries have become more globally interconnected, multinational corporations (MNC) are relying more on tax planning strategies that take advantage of differences among countries' corporate tax systems to reduce their overall tax liabilities. These strategies have led to concerns about the erosion of countries' corporate tax bases through the shifting of profits from one jurisdiction to another. In addition, globalization can complicate tax administration by resulting in disputes about the correct tax liability in different countries. U.S. MNC activity can result in audits conducted by the countries in which they are operating where U.S. MNCs disagree with the adjustment made to their taxable income.

In 2015, the Organisation for Economic Co-operation and Development (OECD) released a report with 15 action items addressing a variety of issues related to tax base erosion and profit shifting. In 2017, we reported on two of these actions: (1) revisions of the transfer pricing guidelines and new transfer pricing documentation; and (2) country-by-country reporting.¹ The OECD report also included an action item addressing ways to improve mechanisms for resolving international tax disputes.

These disputed adjustments can potentially lead to double taxation of a U.S. MNC's income. These disputes can be resolved through the mutual agreement procedure (MAP). MAP is administered through the Advance Pricing and Mutual Agreement Program (APMA) in the office of the U.S. Competent Authority (USCA) within the Internal Revenue Service (IRS). The designated USCA is the Deputy Commissioner of the Large Business and International Division of IRS.

¹GAO, *International Taxation: Information on the Potential Impact on IRS and U.S. Multinationals of Revised International Guidance on Transfer Pricing*, [GAO-17-103](#) (Washington, D.C.: Jan. 27, 2017).

You asked us to review how the United States is administering the process for resolving international tax disputes. In this report, we (1) describe the MAP dispute resolution process for U.S. MNCs, (2) assess the information IRS provides to taxpayers about the MAP process, and (3) assess to what extent IRS evaluates management of dispute resolution cases.

To describe the dispute resolution process, we reviewed documents and interviewed officials in IRS's USCA, the office responsible for administering the MAP process. To assess the information IRS provides taxpayers, we reviewed USCA guidance on how the process works and interviewed USCA officials on how they communicate with taxpayers. To assess how IRS evaluates its administration of dispute resolution cases, we compared USCA's processes with standards for internal controls and characteristics of a good tax system: efficiency, equity, and administrability.² Specifically, we interviewed USCA officials on their process for ensuring efficient management. We also reviewed MAP case data, including analyzing both the full inventory management database of tracked dispute cases as well as a generalizable random sample of dispute resolution case files. For more information on our methodology, see appendix I.

We conducted this performance audit from April 2017 to March 2019 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Background

U.S. taxpayers who earn income abroad may be subject to U.S. taxes on that income. Firms incorporated in the United States can earn income from their own foreign activities or through their ownership of foreign subsidiaries. In such cases, income is subject to tax in both the country

²GAO, *Standards for Internal Control in the Federal Government*, [GAO-14-704G](#) (Washington, D.C.: Sept. 10, 2014); and *Understanding the Tax Reform Debate: Background, Criteria, and Questions*, [GAO-05-1009SP](#) (Washington, D.C.: Sept. 1, 2005).

where it was earned and in the United States. In this report, we focus on U.S. corporations with operations in foreign countries.³

Countries have generally adopted one of two alternative approaches to taxing corporations' foreign income. Prior to the enactment of Public Law 115-97—commonly referred to by the President and many administrative documents as the Tax Cuts and Jobs Act of 2017 (TCJA)—the U.S. government taxed U.S. corporations largely on a worldwide basis, meaning that the United States taxed both the domestic and foreign earned income of corporations.⁴ Most other countries, including most OECD member countries, use a largely territorial approach that taxes income earned within their borders, and exempts certain foreign-earned income of their resident corporations from taxation.

However, under both a worldwide and a territorial system, income earned by foreign entities from operations within a country is taxed by that country. As such, the corporation or its subsidiary must file a tax return in that country, and the country's tax authority can audit the tax return and adjust taxable income and taxes due.

Countries have adopted measures to limit the potential for double taxation, which occurs when two or more countries levy taxes on the same income due to differences in the tax jurisdictions and tax systems. To avoid double taxation, countries—including the United States—that tax on a worldwide basis provide a credit for foreign taxes paid that reduces the MNC's domestic tax liability. In addition, countries maintain tax treaties with each other that cover a wide range of tax issues but have two primary purposes: (1) avoiding double taxation, and (2) preventing tax evasion.

Despite these efforts to limit disputes, a U.S. MNC may disagree with an adjustment made to its taxable income. In such cases, an MNC can go directly to the country's tax authority to try to resolve the dispute. According to tax experts we spoke with, if, however, a U.S. MNC views

³Individual taxpayers with income earned abroad may also be subject to taxes in the country where the income was earned and the United States. See, GAO, *Tax Policy: Economic Benefits of Income Exclusion for U.S. Citizens Working Abroad Are Uncertain*, [GAO-14-387](#) (May 20, 2014).

⁴To provide for reconciliation pursuant to titles II and V of the concurrent resolution on the budget for fiscal year 2018, Pub. L. No. 115-97, 131 Stat. 2054 (Dec. 22, 2017) (hereafter the Tax Cuts and Jobs Act).

this process as unlikely to be successful or if it was unsuccessful and believes the adjustment would result in double taxation, the corporation can ask USCA for assistance in resolving the dispute.

In the United States, the designated USCA is the commissioner of the Large Business and International Division of the IRS. The USCA office is made up of two groups: the Advance Pricing and Mutual Agreement Program (APMA) and the Treaty Assistance and Interpretation Team. According to USCA officials, most disputes involving U.S. MNCs—the focus of this report—are resolved through APMA.

TJCA significantly changed the way in which the United States taxes MNC's income but some experts have pointed out that the law is unlikely to end profit shifting. The Congressional Budget Office estimated in April 2018 that TCJA would reduce profit shifting by about \$65 billion per year out of an estimated \$300 billion of profit shifting per year prior to the act. For U.S. corporations earning income directly through foreign subsidiaries, the act moved the United States from a system that generally taxed worldwide income and provided a credit for taxes paid abroad to a system that generally does not tax foreign-sourced income. However, the new 'territorial' system created by the act included a number of provisions designed to protect the United States' corporate tax base by taxing some foreign income. It included (1) a lower worldwide tax on global intangible low-taxed income, and (2) a corresponding tax on intangible income earned abroad based on assets in the United States (foreign-derived intangible income). The act also added a corporate tax base erosion and antiabuse tax. It is not clear how these provisions will affect corporations' allocation of profits and business activity.

MAP Has Multiple Stages and Potential Resolution Paths

The process of resolving a dispute through MAP usually begins when a U.S. MNC requests assistance from USCA to resolve disputes over an adjustment in either its foreign-filed or its U.S. tax return. According to IRS, the number of active MAP cases, as of October 2017, was 686 and covered \$26 billion of income subject to potential double taxation.⁵ It

⁵These data from IRS's APMA office represent the office's inventory as of October, 25, 2017. This snapshot differs from OECD's MAP statistics which provide statistics over the entire year.

should be noted that a single U.S. taxpayer can be involved in multiple MAP cases because disputes are resolved bi-laterally. For example, if a U.S. MNC had a dispute involving the allocation of overhead costs across multiple subsidiaries in different countries, then there would be separate dispute cases for each country involved. According to IRS data, the number of MAP cases filed each year has been growing, more than doubling in 5 years from 100 in 2010 to 286 in 2014.

As noted earlier, when a U.S. MNC disputes a foreign tax authority's adjustment to a tax return, the U.S. MNC can try to resolve the issue through the appeals process within the taxing jurisdiction. However, according to tax experts we spoke with, if the U.S. MNC is unsuccessful or if the U.S. MNC believes the local appeal will be less successful than the MAP process, it can request assistance from USCA.

Once a taxpayer has requested assistance through MAP, USCA conducts an initial review to determine if it will accept the request. For example, USCA analysts would ensure that the request involves potential double taxation and that the foreign country was a treaty partner.

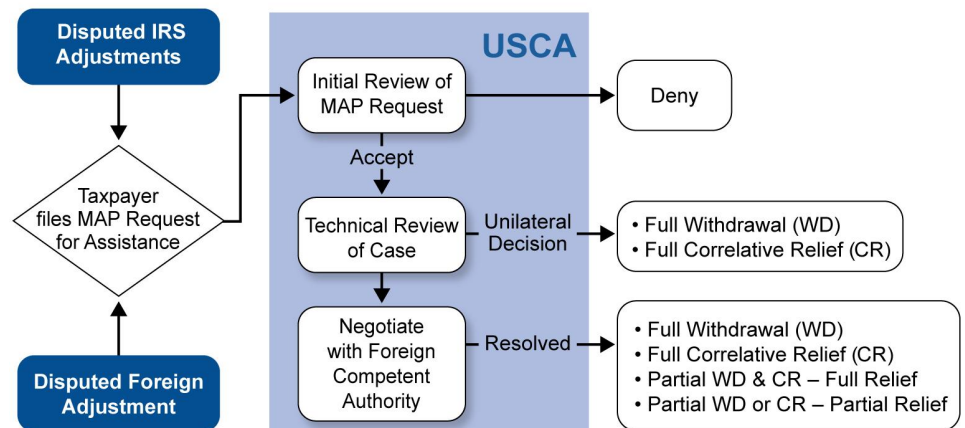
If USCA accepts the MAP request for assistance, it reviews the technical facts of the dispute and prepares its position prior to negotiating on a resolution with the foreign competent authority. When IRS, rather than the foreign tax authority, initiates the adjustment, USCA will discuss the facts of the case with the IRS examiner who proposed the adjustment, but determines on its own how much of the adjustment is justified. In the case of foreign-initiated adjustments, USCA will contact the foreign competent authority while developing its position to provide updates and obtain any needed information. According to USCA officials, based on its review, the USCA determines whether it considers the adjustment valid and the amount of the adjustment that should be withdrawn by the initiating tax authority, and what amount of relief USCA may provide. USCA can also unilaterally decide to fully withdraw the IRS adjustment or provide full correlative relief for a foreign-initiated adjustment that USCA considers valid.

USCA resolves disputes brought to it by MNCs according to MAP specified in the tax treaties. Under the treaties, international tax disputes that may result in double taxation can be resolved in the following five ways:

- The country that initiated the adjustment to taxable income can fully withdraw the adjustment, leaving the taxpayer’s reportable taxable income unchanged.
- USCA can provide correlative relief to the MNC. This relief usually takes the form of a corresponding adjustment, which relieves double taxation caused by the other country’s adjustment.
- USCA and the foreign country can agree to a combination of withdrawing some of the adjustment to taxable income and providing relief for the remaining adjustment to provide full relief of double taxation to the taxpayer.
- USCA and the foreign country can agree on some combination of withdrawal and relief that results in partial relief to the taxpayer.
- No relief from adjustment.⁶

Figure 1 provides an overview of the basic process of a MAP request for assistance. Appendix III provides illustrative examples of dispute resolution cases and resolutions.

Figure 1: IRS United States Competent Authority (USCA) Mutual Agreement Procedure (MAP) Process



Source: GAO. | GAO-19-81

⁶In addition to the five ways USCA resolves a MAP case; at any point the taxpayer can also withdraw its request for USCA assistance, which ends the case without a resolution through USCA.

Once USCA has determined its position, it begins negotiating with the foreign competent authority to resolve the dispute. These cases can take several years to resolve with some taking much longer than the average, particularly if there is a fundamental disagreement. For example, USCA's APMA inventory data from 2013 to 2017 indicate the average processing time was around 2 years, but cases ranged from as little as a few months to 5 years to resolve, with a few cases taking even longer. In addition, the inventory data show that disputes are generally over taxable income from prior years. For example, a MAP case resolved in 2017 could have been filed in 2008 for a dispute over 2005 taxable income. However, cases may be shorter when the tax treaties include provisions for binding arbitration. The United States has treaties with four countries that include provisions for binding arbitration. If the two countries are unable to resolve the dispute within 2 years, the taxpayer can request that the case go to arbitration for a decision.⁷

Throughout the entire process, the taxpayer has a right to withdraw the request and accept the tax authority's adjustment which may entail double taxation. According to tax experts that we interviewed, if the adjustment is small, a taxpayer may prefer to accept the double taxation rather than incur the cost of going through the MAP process. These costs can include direct costs of retaining tax advisors as well as the indirect costs of listing the amount of funds that are in dispute on their financial statement as an unresolved tax issue. The taxpayer can also refuse the negotiated or arbitrated resolution and appeal the case to the IRS office of appeals or foreign tax authority.

⁷The four countries with binding arbitration provisions in treaties with the United States are Belgium, Canada, Germany, and France.

Available Information about MAP is Limited and Highly Technical

USCA Provides Information Needed for Requesting MAP Assistance, but the Information has Limited Accessibility

USCA provides information about the MAP process through an IRS web page on competent authority assistance.⁸ The webpage includes contact information for USCA offices and a link to a document that describes the process for requesting assistance. The document is in the form of a Revenue Procedure—an official statement of a procedure based on the Internal Revenue Code, related statutes, tax treaties, and regulations. Our analysis of the information on the website found a number of issues that limit its accessibility:

- The website does not include an overview or high-level description of the MAP process.
- The website lacked elements such as frequently asked questions or fact sheets that IRS has developed for similar processes that help promote understanding of complex tax issues.⁹
- The website does not explain in clear language what constitutes a tax dispute eligible for the MAP resolution process. Other IRS websites provide more detailed information for other issues relevant to U.S. MNCs. For example, the IRS website for country-by-country reporting provides a detailed page explaining the new reporting guidance with multiple links for additional guidance.¹⁰
- In addition, USCA's guidance for requesting MAP assistance is an 87-page revenue procedure. While this document is complete, it is highly

⁸Internal Revenue Service, Competent Authority Assistance, International Taxpayers, accessed on November 8, 2018, <https://www.irs.gov/individuals/international-taxpayers/competent-authority-assistance>.

⁹See, for example, Internal Revenue Service, Appeals is an Independent Organization, Compliance, accessed on November 7, 2018, <https://www.irs.gov/compliance/appeals/appeals-an-independent-organization>.

¹⁰Internal Revenue Service, Country-by-Country Reporting, International Businesses, accessed on November 6, 2018, <https://www.irs.gov/businesses/international-businesses/country-by-country-reporting>.

technical and may not be easily understood by taxpayers seeking relief from double taxation.

IRS requires information for taxpayers to be clear and accessible. IRS's Taxpayer Bill of Rights states that taxpayers have the right to clear explanations of tax laws and IRS procedures.¹¹ In addition, the federal internal control standards, the Plain Writing Act of 2010, and Office of Management and Budget plain writing guidance state that agencies should, for example, communicate the necessary quality information externally.¹² Moreover, accessibility is consistent with the criteria we have previously identified for a good tax system.¹³ IRS's Strategic Plan for Fiscal Years 2018-2022 notes that the agency faces a business environment that is becoming more global, dynamic, and digital, further underscoring the importance of taxpayers having accessible, plain language guidance on MAP.¹⁴

The Organisation for Economic Co-operation and Development (OECD) also assessed the accessibility of USCA's guidance and found that it met OECD's minimum standards. As part of its base erosion and profit-shifting project, the OECD has been reviewing countries' administrations of the mutual agreement processes. In its review of the United States' process, the OECD concluded that while U.S. MAP guidance is comprehensive and available, and fully met the OECD's minimum standards, some further clarity could be provided.

The OECD review offered examples of how other countries provide taxpayers with overview information they can use before accessing more detailed technical guidance. For example, Canada publishes an annual MAP Program Report on its website that includes background information on its process, as well as general information on the steps in the process and high-level information on timeframes. Singapore's MAP web page includes basic information on the MAP process, an example of a case

¹¹Internal Revenue Service. *Publication 1, Your Rights As A Taxpayer*, (Washington, D.C.: September 2017).

¹²GAO, *Standards for Internal Control in the Federal Government*, [GAO-14-704G](#) (Washington, D.C.: Sept. 10, 2014); Pub. L. No. 111-274, 124 Stat. 2861 (2010); and Office of Management and Budget. *Final Guidance on Implementing the Plain Writing Act of 2010*, M-11-15, (Washington, D.C: April 13, 2011).

¹³GAO, *Understanding the Tax Reform Debate: Background, Criteria, and Questions*, [GAO-05-1009SP](#) (Washington, D.C.: Sept. 1, 2005).

¹⁴Internal Revenue Service, *Strategic Plan, FY2018-2022* (Washington, D.C.: April 2018).

that would be suitable for MAP, and a link for users to provide feedback on the usefulness of the information.

USCA officials said that they have not improved the information provided on their website because they believe the current guidance to be sufficient. However, USCA officials told us that they are engaged in some efforts that may improve the information they provide to taxpayers. USCA officials stated that USCA is close to finalizing a “practice unit” explaining the competent authority process. According to USCA officials, this unit uses plain language to walk taxpayers step by step through MAP and the competent authority process. The unit also highlights the roles and responsibilities of all the stakeholders in the process, including the taxpayers. USCA officials said they intend to make the practice unit available on USCA’s public website and the United States’ OECD MAP Profile.¹⁵

APMA officials also said they expect that the additional information on the requirements of MAP and Revenue Procedure 2015-40 will be useful to those unfamiliar with the processes. USCA officials did not provide a date for when this practice unit would be completed.

Providing taxpayers with a clear overview and accessible guidance on the MAP process would help ensure that taxpayers who might benefit from entering the MAP process are aware of the process, know how to navigate it, and understand the general time frames for relief. Providing information that helps facilitate this process could help reduce taxpayer burden.

USCA Does Not Document Contacts with Taxpayers

USCA may contact taxpayers about their cases for various reasons. Officials in the APMA office stated that they send acknowledgement letters when the MAP request is accepted, and routinely gather additional information from taxpayers to fully develop a MAP case. They said that an analyst generally will communicate with a taxpayer before and after APMA has substantive discussions with its foreign counterparts regarding the taxpayer’s case. While officials stated they provide regular contact,

¹⁵Internal Revenue Service, Practice Units, accessed on November 6, 2018, <http://www.irs.gov/businesses/corporations/practice-units>.

they do not have a process to systematically record or track these contacts, other than in the case file.

Regular contact with taxpayers may help make the process more transparent and help ensure that they are informed about their cases. One of the criteria we have previously identified for a good tax system is transparency.¹⁶ A transparent tax system reduces uncertainty for taxpayers, allowing them to better plan their decisions about employment and investment.

According to IRS officials, APMA provides general guidance on when a taxpayer should be notified of developments in the case or its status.¹⁷ APMA officials stated that contact will vary depending on the facts and circumstances of the case such as its complexity and frequency of communications with the foreign competent authority. However, the guidance is focused on taxpayer expectations and does not address any requirements of officials to track or record contacts.

Contacts with taxpayers could affect perceptions of the transparency and fairness of the MAP process. Tracking and recording contact with taxpayers would help provide APMA with assurance that taxpayers are being kept aware of the status of their MAP case in a timely manner. Monitoring such information would help APMA to evaluate the transparency and fairness of its MAP administration. It would also help assure APMA there is consistency in contacting taxpayers.

¹⁶GAO, *Understanding the Tax Reform Debate: Background, Criteria, and Questions*, [GAO-05-1009SP](#) (Washington, D.C.: Sept. 1, 2005)

¹⁷This guidance is contained in Rev. Proc. 2015-40.

USCA Does Not Track Key Data nor Use Existing Data to Assess Management of MAP Cases

USCA Does Not Track Hours Worked or Key Milestones for MAP Cases

APMA maintains an inventory database that tracks some information on MAP cases. These data include how many months it took to resolve the case, the analyst assigned to the case, and whether an economist was assigned. According to APMA officials, each MAP case is assigned an analyst and, for complex cases, an economist. APMA groups analysts into teams that work on MAP cases from different geographic regions. Three teams consist of economists that are assigned to cases managed by other teams. APMA data on how staff are deployed are shown in table 1.¹⁸

¹⁸ APMA reorganized in the fall of 2018 and is now organized into three groups that contain two teams each with each team containing both economists and analysts. According to IRS, those groups still focus on different geographic regions. The reorganization was designed to facilitate staffing across cases, teams and regions.

Table 1: Advanced Pricing and Mutual Agreement Program (APMA) Staff and Cases by Team

APMA Team	2014		2015		2016		2017	
	Staff	Cases	Staff	Cases	Staff	Cases	Staff	Cases
n/a								
Team 2	6	n.a.	8	n.a.	7	n.a.	5	n.a.
Team 3	7	33	10	82	10	93	8	116
Team 4	7	18	9	43	7	12	8	7
Team 5 ^a	7	63	9	79	10	87	9	63
Team 7 ^a	10	355	9	280	9	272	7	210
Team 8	10	72	9	73	9	63	7	52
Team 9 ^a	8	127	9	89	6	143	7	201
Team 10	9	14	9	29	8	17	9	13
Team 11	7	n.a.	7	n.a.	9	n.a.	6	n.a.
Team 12	9	n.a.	7	n.a.	7	n.a.	6	n.a.
Total	80	682	86	675	82	687	72	662

Source: GAO presentation of Internal Revenue Service data. | GAO-19-81.

Notes: Data are as of December 31 each year. Staff counts do not include managers. APMA does not have an analyst "Team 1" or "Team 6."

n.a.=not applicable. Teams 2, 11, and 12, include only economists. Number of cases is not reported to avoid double counting because economists are assigned as needed to cases in other teams.

^aTeams 5, 7, and 9 cover cases involving India that counts tax issues covering multiple years as separate cases in each year which leads to a greater number of cases for these teams.

Lack of Data on Complex Cases

While these data provide some information on workload, they do not provide information on how many hours or staff days are associated with a particular case. This information would be useful to know because it could provide insight about the resources needed for different cases based on differences in complexity and other factors. Standards for internal control state that management should establish and operate monitoring activities that can be used to evaluate results and ensure that objectives are met with minimum wasted resources. However, according to APMA officials, their tracking system is not set up to track hours or staff days spent on each case.

Instead, according to APMA officials, their staffing process accounts for differences in complexity in other ways. Officials explained that when APMA receives a MAP request, it ranks the request according to complexity using a scale that runs from 1 to 5. The more complex cases,

those ranked 3 or higher, are assigned an economist which can increase the cost of working the more complex cases.

Lack of Data on Resources Expended

USCA's existing inventory data are insufficient to accurately measure the resources spent across MAP cases because APMA's inventory management system does not allow for recording hours or staff days spent on each case. Specifically, while a case may take several years to resolve, an analyst may not be actively working the case. For example, two MAP cases could take the same number of months to process, but in one case, the analyst may have spent many hours reviewing the case, while in the other case, the analyst was waiting for a response from the foreign competent authority and not actively working on the case. The actual time spent on the cases by these two analysts would therefore be different though the processing time would be the same. Measuring hours spent on each case could help APMA know if it needs to adjust its staffing to increase the efficiency of its resource allocation process. However, without collecting and analyzing trends and variations in hours spent per case, APMA is unable to assess whether it is resolving MAP cases and using staff resources efficiently.

Lack of Information on Key Milestones and Progress

APMA tracks some data on the status of cases in progress such as the date when the case was submitted, the time to date it has been in inventory, and the current status of the case.¹⁹ The current status of cases in progress is identified in the inventory database as being in development, a position paper written, in negotiation, reached a tentative agreement, and reached mutual agreement (formal exchange of resolution papers). However, APMA does not track progress toward these key milestones that could help it manage cases, such as the time a case spends in each status or the date the case moved from one status to the next.

APMA also lacks data on certain milestones that may help it better manage the MAP process. It does not have a system for tracking whether a prefiling meeting was held for a case. USCA offers prefiling meetings for taxpayers considering requesting assistance, which provide

¹⁹Other information includes taxpayer identifiers, and who is working on the case.

information on what the taxpayer can expect in a MAP case. Taxpayers may seek prefiling meetings to (1) learn more about the working relationship with the foreign competent authority, and (2) learn what information may be helpful to include in the request. According to USCA, it has found that these meetings facilitate the process and considers them helpful. However, USCA would have increased assurance that the meetings are effective if it collected data and analyzed cases with and without prefiling meetings.

In addition, APMA does not retain any case-in-progress data when the case is resolved, nor does it collect and maintain information in its inventory database on how agreements are implemented. In its review of MAP processes across countries, OECD recommended that USCA expand its guidance by including information on how MAP agreements are implemented. This guidance would be in the form of steps to be taken and the timing of the steps. APMA does not record these steps in its inventory database. APMA would be better able to track a case through completion and assess its effectiveness if it collected and maintained this information.

Standards for internal control state that management should establish and operate monitoring activities to evaluate program results. However, APMA does not have adequate systems in place to monitor its activities, such as a system to record time spent in each status (or stage) of the process. Tracking key stages in the MAP process would better position APMA to evaluate its management of MAP cases. For example, if APMA observes that some cases are taking longer to resolve, it could use information on time spent in different stages of the process to identify the source of the slow down and take corrective action.

Lack of Information on Dollar Amounts

APMA also tracks the type of outcome resulting from resolution of a MAP case in its inventory database, but does not record the dollar amount involved in the resolution of the case in the database. Such information could be valuable in identifying systemic issues in program operations or potential policy issues. As discussed earlier, MAP cases are resolved by either the initiating country withdrawing the adjustment, the relevant treaty partner providing relief to the taxpayer to offset the double taxation, or a combination of the two.

APMA stopped recording actual dollar amounts in 2014 when it changed to recording case outcome categories rather than amounts withdrawn and relieved.

Standards for internal control state that management should use quality information to achieve the entity's objectives. According to the standard, management should design a process that uses the entity's objectives and related risks to identify the information requirements needed to achieve the objectives and address risks. Recording the actual amount of the outcome and pairing it with an accurate and consistent adjustment would allow APMA to conduct analyses to determine if certain characteristics of cases affect the relative contribution to the resolution between the United States and the relevant treaty partner.

APMA Does Not Have Controls to Ensure the Quality of its Case Data

In our review of a generalizable sample of MAP case files we found a number of inconsistencies between the amount of adjustment recorded in APMA's inventory database, the amount recorded in the original MAP request, and the amount recorded in the resolution letter provided to taxpayers and the foreign competent authority. We also found inconsistencies between the request letter and the resolution letter amounts. On the basis of our sample, we estimate that about 30 percent of the entries in the inventory database had these types of discrepancies.

The cause of some of these discrepancies was relatively easy to identify and correct, such as transcription errors, which could have been detected if APMA had a more robust inventory management system in place. Other inconsistencies in the data were more difficult to resolve. According to IRS officials, some discrepancies could be explained by changes in exchange rates over time. However other inconsistencies could be not be as easily explained.

These inconsistencies exist because APMA does not have controls in place to systematically and routinely evaluate the quality of the data in its inventory of cases. As a result, the accuracy of program measures that USCA might develop based on these data may be uncertain.

Having controls in place to ensure the accuracy of data in the inventory database would also help APMA meet OECD's minimum standards. The OECD has called for countries to provide MAP case statistics by country

and published these statistics for the first time in 2018.²⁰ According to APMA officials, APMA is currently working on implementing an upgraded inventory management system that should help APMA meet this goal. Development and full implementation of this project has been underway for 4 years.

APMA Does Not Analyze Currently Available Data to Inform Its Operations and Management Decisions

APMA's inventory data-base includes data on both pending and resolved MAP cases that can help management monitor program operations and potentially identify areas to improve the management of MAP cases. However, APMA does not systematically analyze data to identify areas for improvement. For example, analysis of trends and comparisons of certain case characteristics—such as the country initiating the adjustment, the elapsed time on the case, whether an economist was assigned to the case, and the negotiated outcome—can help to identify how these characteristics may be related. According to APMA officials they do not undertake this kind of data analysis because they use the data as needed to manage current resources and to achieve their primary goal of satisfying the OECD's minimum standards. These minimum standards include such goals as countries ensuring that adequate resources are provided to the MAP function and ensuring that both competent authorities should be made aware of MAP requests and given an opportunity to share their views on whether the request should be accepted.

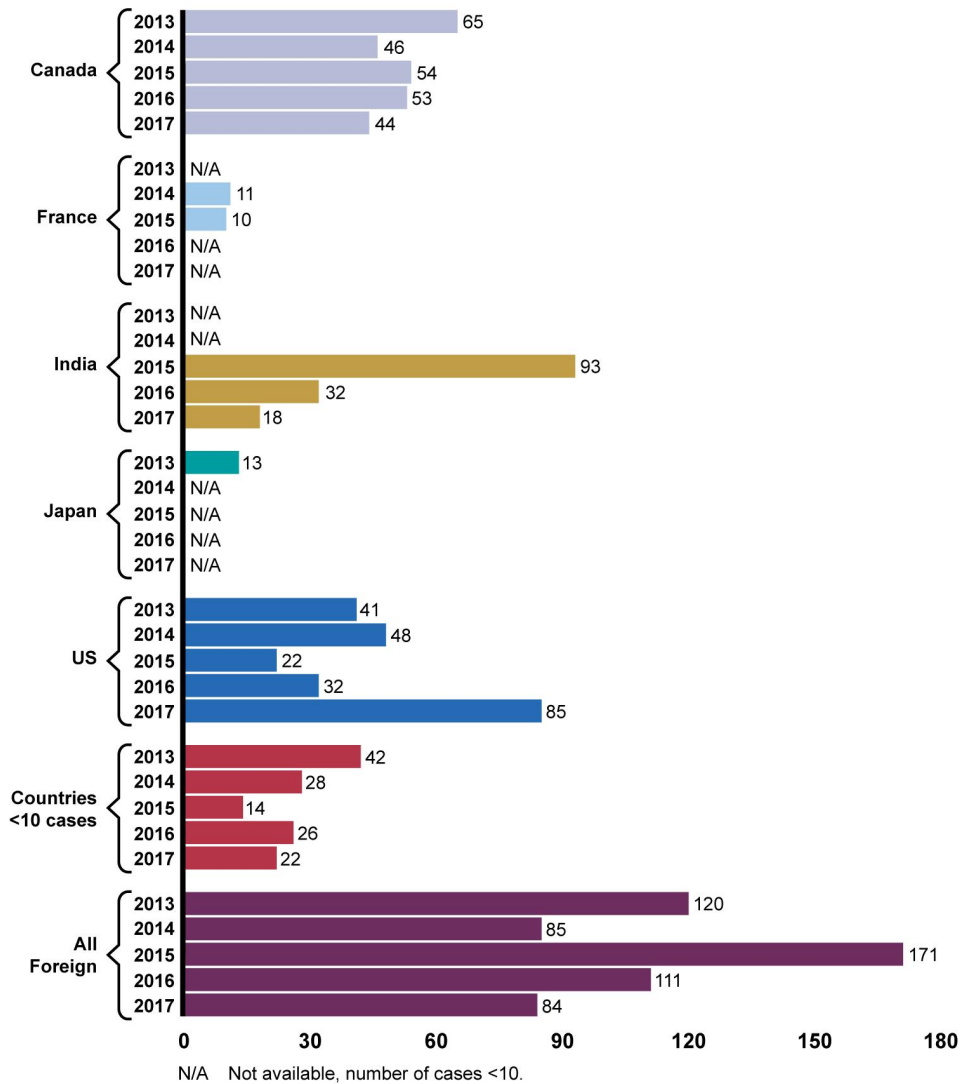
According to federal internal control standards, management should design information systems to provide information to meet the entity's objectives and respond to risks. Information and analysis that helps APMA understand changes in international environment and complexity of U.S. MNCs would better enable it to identify future resource needs by evaluating trends in case characteristics.

In the absence of quantifiable analysis conducted by APMA, we used information from its existing inventory data to illustrate the types of analysis that may be possible. For example, figure 2 shows that the volume of cases can vary greatly by country over time. The figure shows

²⁰These OECD published statistics are now the platform through which USCA provides public statistics on its MAP process.

that the number of cases resulting from an adjustment by IRS ranged from a low of 22 in 2015 to high of 85 in 2017. Conducting similar analysis of trends in volume may help APMA better plan for allocating its limited resources to different teams in anticipation of increased case volume. In addition, because APMA allocates staff across teams that focus on particular countries, tracking trends in case load by country could help USCA prepare to anticipate spikes in cases and allocate resources more effectively across country teams. By conducting regular trend analyses, APMA could also identify areas for further analysis to determine what may be driving variations in case load by country.

Figure 2: Number of Resolved MAP Cases by Selected Country that Made an Adjustment, 2013-2017

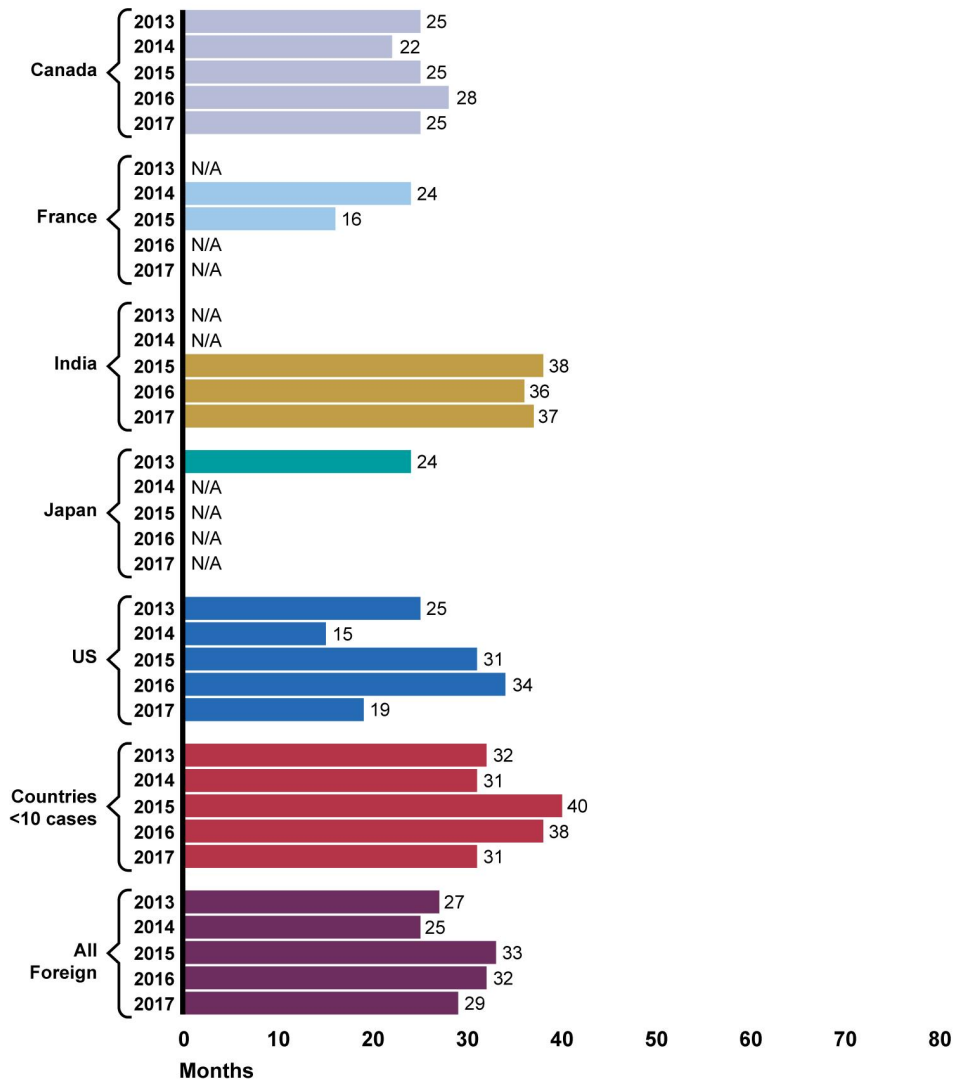


Source: GAO analysis of Internal Revenue Service data. | GAO-19-81

Similarly, figure 3 shows our analysis of the average time to resolve a case. Average case time ranged between 15 and 40 months, with the average case time exceeding the OECD-recommended 24-month period for a number of countries and years. By conducting similar analysis of the trends and differences in processing time across MAP cases, APMA

would be better able to identify areas meriting additional review for ways to improve timeliness.

Figure 3: Average Time in Months to Complete MAP Cases by Selected Country, 2013-2017



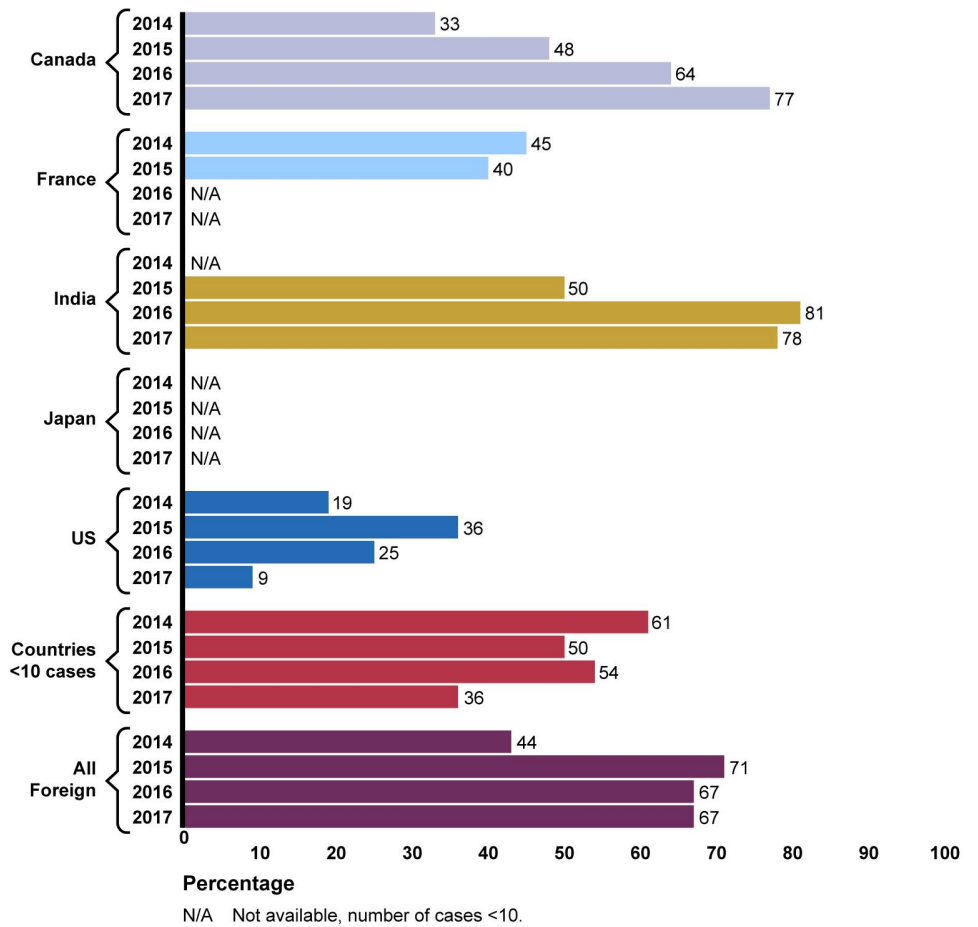
N/A Not available, number of cases <10.

Source: GAO analysis of Internal Revenue Service data. | GAO-19-81

We also used inventory data to analyze outcomes in terms of the determinations reached through MAP negotiations. One analysis included an examination of the share of cases in which the United States provided some relief to the taxpayer. As can be seen in figure 4, most foreign cases in most years resulted in relief being shared between the two countries involved in a dispute. As shown in figure 4, in 2017, approximately two-thirds of all foreign cases were resolved with both countries providing some relief compared to less than 10 percent of U.S. cases.²¹

²¹These percentages track cases where both countries share relief and do not account for cases where the foreign country resolved the case entirely by fully withdrawing their adjustment or providing all the relief for a U.S.-initiated adjustment.

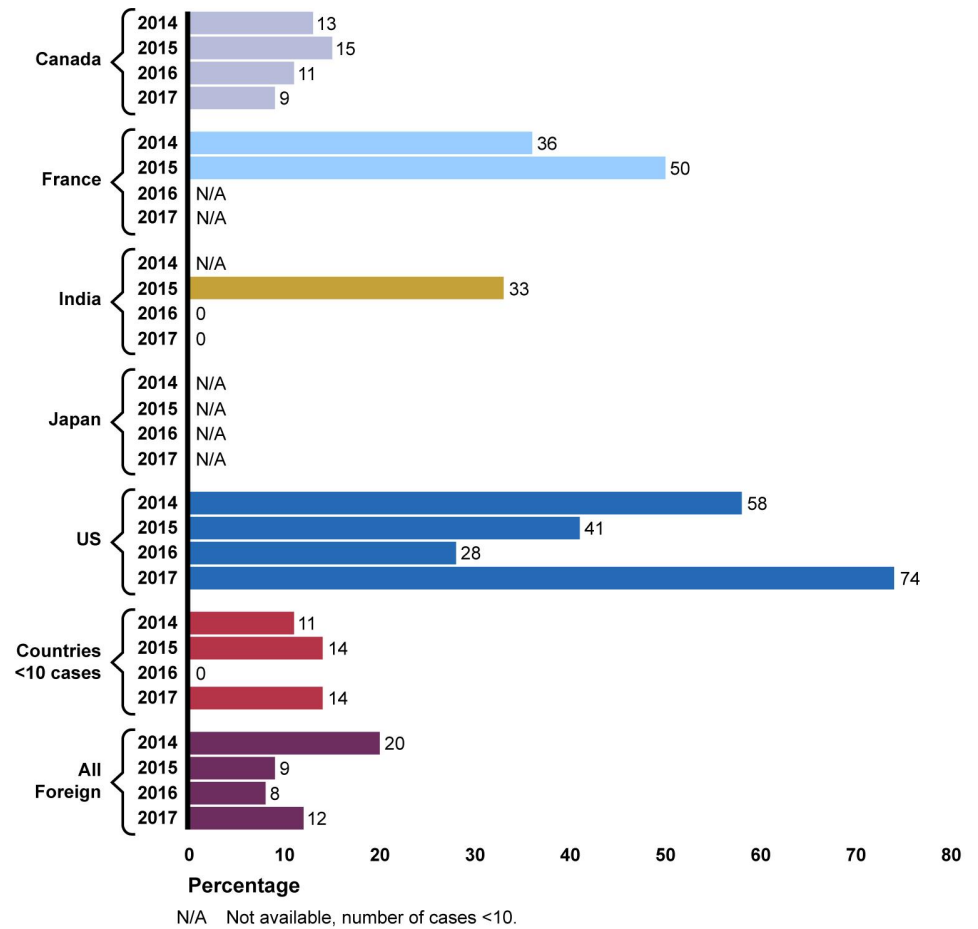
Figure 4: Share of MAP Cases Partially Resolved by the United States, 2014-2017



Source: GAO analysis of Internal Revenue Service data. | GAO-19-81

However, as shown in figure 5, USCA in most years fully withdrew a large percentage of adjustments made by IRS. In 2017, 74 percent of IRS adjustments were withdrawn. The data show that U.S.-initiated cases were more often resolved entirely by the United States than with the foreign country providing some of the relief.

Figure 5: Share of MAP Cases Resolved Entirely by the United States, 2014-2017



Source: GAO analysis of Internal Revenue Service data. | GAO-19-81

However, these data on case resolutions need to be interpreted with caution. For example, as pointed out by IRS officials, a measure like the percent withdrawn may be misinterpreted if it concerns a small number of large MNCs with operations in many countries, and the adjustments are small unless this information is provided as context. Nonetheless, the case resolution data can be useful for guiding further analysis by helping to identify areas that would merit further analysis of the reasons for withdrawing cases or the reasons IRS examiners are making adjustments that are not upheld by USCA. Analyzing trends in outcomes would help to ensure that APMA is not missing opportunities to protect the U.S. corporate tax base and that IRS examiners are cognizant of tax treaty

treatment of foreign source income of U.S. MNCs. Additional examples of MAP case data analysis are provided in appendix IV.

While APMA must work all MAP cases, developing quality data on MAP cases would help to ensure effective management of the program. Analyzing trends in case data could help identify and manage evolving demands and priorities—such as the challenges present in a changing global tax environment. According to federal internal control standards, as a part of management controls, management should design information systems to obtain and process information to meet operational needs.

Because APMA cannot alter its workload, it is all the more important to effectively manage staff and time. Reliable information systems are essential for effective management. Without assessing APMA's current and past performance, APMA may be less able to identify areas for improvement. Conducting analysis and improving the quality of data could help inform APMA's allocation of resources and inform other parts of the agency concerning international tax issues. For example, IRS exams may be better able to judge the appropriateness of its tax adjustments when it is informed about how USCA has viewed similar adjustments governed by tax treaties.

APMA Does Not Record the Disputed Tax Issues in Its Inventory Database, Which Limits the Usefulness of Data

The APMA inventory database contains select characteristics of resolved cases, such as the time it took to resolve the case and the country that initiated the adjustment in dispute. However, it does not contain information on the tax issue that was in dispute. Without tracking the tax issue in dispute, APMA is unable to analyze trends in tax issues which could be used to determine if there are systemic issues that could be solved through means such as changes in IRS regulations, treaty, or statute.

USCA officials told us that there are additional costs to tracking tax issues and that defining the type of tax issue involved in complex international tax cases could be difficult. However, IRS tracks issues in other similar areas. For example, IRS's Office of Appeals, which handles a wide range of tax controversies covering both international and domestic issues, tracks the tax issue in dispute.

Furthermore, APMA includes categories of tax transactions in its annual statutory reports. The categories are used in Advanced Pricing Agreements (APA) to distinguish between a U.S. entity and non-U.S. entity, and to determine whether a transaction covered by an agreement involved the sale of tangible property, use of intangible property or the provision of services. APAs are agreements between IRS and MNCs on how transactions among related entities of the MNC should be priced. APAs can prevent potential disputes by having agreement on the transaction prior to filing a tax return with IRS. These categories or alternative categories that APMA has already developed could be added to the inventory database to provide additional information on the tax issue in dispute.

To illustrate how the additional information on tax issues can help inform management decisions, we categorized the tax issues in our sample of MAP cases using APA categories.²² As shown in figures 6 and 7, we compared the estimated percentage of certain tax issues in all MAP cases between 2015 and 2017 with those in APA cases in 2014. We also compared tax issues with other characteristics of the MAP cases. As figure 6 shows, an estimated 37 percent of MAP cases involved disputes over a tax adjustment related to services provided by a non-US entity such as a foreign corporation.²³ Figure 6 also shows that disputes concerning the provision of services (both U.S. and non-U.S.) are estimated to account for 61 percent of cases, which far exceeded disputes over the use of intangible property, at 17 percent or the sale of tangible property at 15 percent.²⁴ Conducting similar reviews of this type of information could help APMA better match its resources in terms of experience with different types of tax issues.²⁵

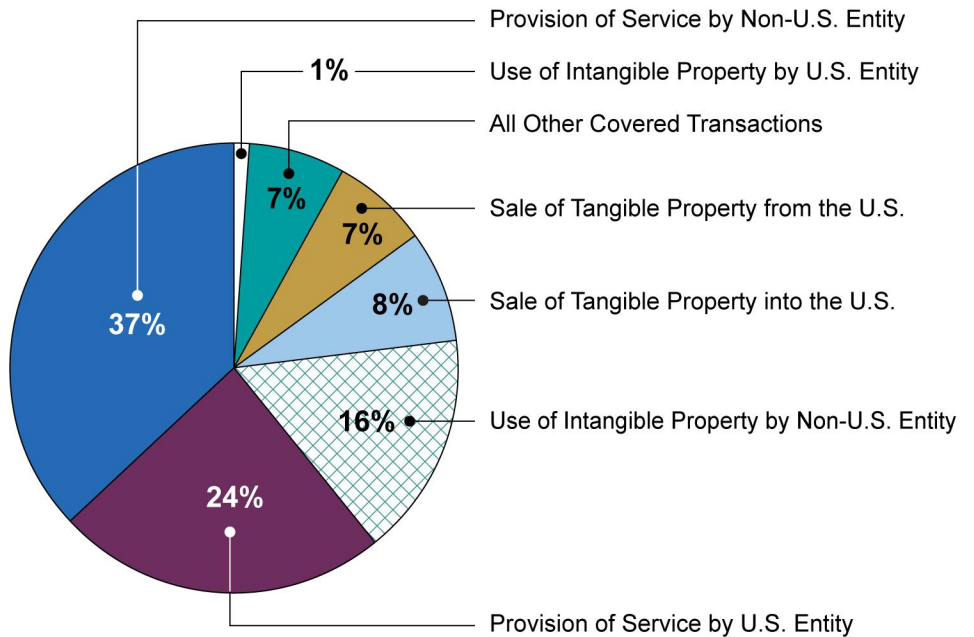
²²We used the narrative describing the tax issue in the taxpayer's request letter as the basis of the categorization.

²³This estimate has a 95 percent confidence interval within +/- 10 percentage points. See appendix I for full list of confidence intervals.

²⁴This estimate has a 95 percent confidence interval within +/- 10 percentage points.

²⁵For further examples of how this type of frequency analysis could be useful for administering the dispute resolution process, see appendix IV.

Figure 6: Estimated Percentage of Types of Tax Issues for All Cases Based on Our Sample of MAP Cases Resolved between 2015 and 2017.



Source: GAO analysis of Internal Revenue Service data. | GAO-19-81

Note: All estimates have 95% margins of error within +/- 11 percentage points.

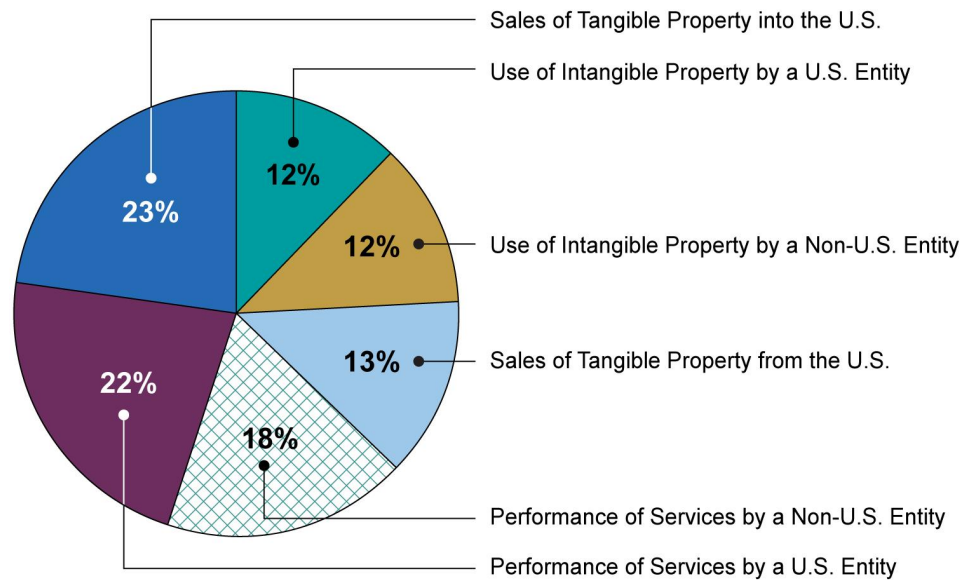
We also compared tax issues identified in MAP cases with the transactions covered in APAs. The results illustrate how tracking tax issues could be useful for improving the administration of both programs. For example, as shown in figure 7, 23 percent of APA transactions covered sales of tangible property into the United States in 2014.²⁶ Our categorization of MAP cases reported in figure 6 shows sales of tangible property into the United States as a disputed issue in only an estimated 8 percent of those cases.²⁷ This difference in relative frequencies may suggest a connection between the programs, as tax practitioners have suggested increasing the use of APAs as a way of reducing international

²⁶For figures 6 and 7, we used 2015 through 2017 data for tax issue categories and 2014 data for the APA categories respectively. We chose to use the 2014 APA data to better align the APA-covered transactions with our resolved MAP case data, which included disputes covering 2014 taxable income.

²⁷This estimate has a 95 percent confidence interval within +/- 9 percentage points. Sales of tangible property from the United States were an issue exhibiting a similar percentage of cases in APA and MAP cases.

tax disputes. However, some of the differences in percentages between figure 6 and 7 could arise from differences in years covered and in categorization of tax issues.

Figure 7: Percentage of Types of Transactions Covered by Advanced Pricing Agreements in 2014



Source: Internal Revenue Service. | GAO-19-81

We also categorized the information to illustrate how tracking tax issues and other characteristics, such as location and the outcomes of the dispute resolution process could help with administration.²⁸ For example, as shown in table 2, the tax issue with the largest estimated share of foreign MAP cases (67 percent) involved the provision of services.²⁹ U.S. MAP cases, in contrast, were spread more evenly across tax issues, with no single tax category having an estimated share greater than 50 percent. Conducting a similar review of this type of information could help APMA match its resource allocations in terms of staff experience with different types of tax issues within its country-focused teams.

²⁸Our sample was not designed to provide precise estimates for all subgroups. Therefore we were unable to distinguish statistically between finer tax categories and all outcomes.

²⁹This estimate has a 95 percent confidence interval within +/- 15 percentage points.

Table 2: Estimated Percent of Cases Initiated in United States or Abroad Covering Different Tax Issues

Tax Issue	Location (U.S.)	Location (Foreign)
Sale of Intangible Property	20	14
Use of Intangible Property	36	10
Provision of Service	44	67
All other Types of Covered Transaction	0	10

Source: GAO analysis of Internal Revenue Service data. | GAO-19-81.

Note: All estimates have 95% margin of errors less than +/- 19 percent.

Additionally, table 3 shows when we tracked outcomes of the dispute resolution process, we found that an estimated 69 percent of cases resolved by a combination of withdrawal and correlative relief involved the provision of services.³⁰ For other outcomes, this tax issue of provision of services is estimated to occur 49 percent of the time.³¹ Further research on how outcomes and tax issues may be related could also inform how APMA trains and assigns staff.

Table 3: Estimated Percent of Cases with Tax Issues, Given the Outcomes Correlative Relief (CR) and Withdraw (WD) or Other

Tax Issue	OutCome (CR & WD)	Outcome (Other Outcomes)
Sale of Intangible Property	14	16
Use of Intangible Property	11	24
Provision of Service	69	49
All other Types of Covered Transaction	5	10

Source: GAO analysis of Internal Revenue Service data. | GAO-19-81.

Note: All estimates have 95% margin of errors less than +/- 17 percentage points.

Other analyses could examine the tax issue and whether an economist was assigned or the average processing time. These statistics may help identify insights into complex cases. Undertaking similar reviews across tax issues may help identify areas for increased scrutiny to ensure effective administration.

Federal internal controls standards state that as part of an effective internal control system, management should establish activities to monitor

³⁰This estimate has a 95 percent confidence interval within +/- 16 percentage points.

³¹This estimate has a 95 percent confidence interval within +/- 16 percentage points.

program performance. Reliable information on program operations requires the collection of quality data. Collecting key characteristics and conducting relevant analyses would help ensure effective internal control and could help improve USCA's management of MAP cases.

Conclusions

In a world with a growing number of international transactions, the United States needs an efficient and effective dispute resolution process to ensure that it is protecting the U.S. taxpayer and the U.S. corporate tax base. The MAP processes adopted by countries—including the United States—in their tax treaties are in place to prevent double taxation and ensure the accurate application of treaty provisions.

USCA plays a key role in resolving disputes over double taxation but the agency has weaknesses in its processes that hamper its efforts. First, USCA has not provided clear guidance to taxpayers on how the MAP process works. As a result, taxpayers may be unaware of the process and not fully understand what to expect when they undergo it. Furthermore, USCA does not record when and for what reason there is contact between the taxpayer and USCA, therefore making it difficult for USCA to ensure that taxpayers are informed about the progress of their case.

Second, USCA does not track the hours that analysts spend on cases and the milestones of cases. As a result, USCA does not have a full understanding of the efficiency of the MAP process, including ways to improve it. It also does not have processes to ensure the quality of the data it collects, therefore cannot ensure accurate performance measurement. While APMA aims to meet the minimum standards of the OECD, it does not analyze the data to identify areas for improvement.

Analyses of USCA's data could more fully inform its management decisions. A number of potential analyses are available of how cases are resolved. By forgoing these types of analyses, USCA may be unaware of certain trends, possible explanations for them, or any need to adjust guidance or resources to address these issues.

Finally, many of APMA's tasks depend on factors beyond its control (for example, the volume of taxpayer requests), but management of the processes could benefit from the collection and analysis of well-defined measures and quality data.

Recommendations for Executive Action

We are making the following eight recommendations to the IRS.

The Commissioner of Internal Revenue should direct USCA to provide an overview of the MAP process that is more accessible and transparent than the Revenue Procedure. (Recommendation 1)

The Commissioner of Internal Revenue should direct USCA to ensure that APMA staff record and track contact with taxpayers. (Recommendation 2)

The Commissioner of Internal Revenue should direct USCA to ensure that APMA staff record and track the hours they spend on MAP cases. (Recommendation 3)

The Commissioner of Internal Revenue should direct USCA to ensure that APMA identify and record the dates of key milestones throughout MAP case resolutions. (Recommendation 4)

The Commissioner of Internal Revenue should direct USCA to ensure that APMA puts procedures in place to review the quality of inventory data. (Recommendation 5)

The Commissioner of Internal Revenue should direct USCA to ensure that APMA records the dollar amounts of MAP case outcomes in its database. (Recommendation 6)

The Commissioner of Internal Revenue should direct USCA to ensure that APMA analyzes trends in case characteristics as part of routine program management activities. (Recommendation 7)

The Commissioner of Internal Revenue should direct USCA to ensure that APMA identify and record categories of the tax issue relevant in the dispute. (Recommendation 8)

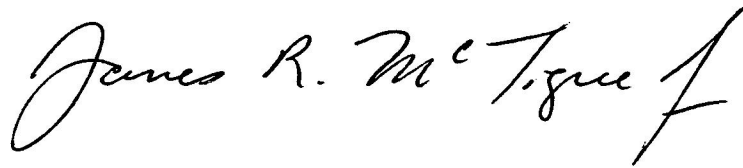
Agency Comments

We provided a draft of this report to the Commissioner of Internal Revenue for review and comment. In its written comments, reprinted in appendix II, IRS agreed with our eight recommendations and will provide

detailed corrective action plans in its 60-day letter response to Congress. IRS also provided technical comments, which we incorporated where appropriate.

As agreed with your office, unless you publicly announce the contents of this report earlier, we plan no further distribution until 30 days from the report date. At that time, we will send copies to the Secretary of the Treasury, the Commissioner of Internal Revenue, and other interested parties. In addition, the report will be available at no charge on the GAO website at <http://www.gao.gov>.

If you or your staff have any questions about this report, please contact me at (202) 512-9110 or mctiguej@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made key contributions to this report are listed in appendix V.



Sincerely yours,
James R. McTigue, Jr.
Director
Strategic Issues

Appendix I: Objectives Scope and Methodology

As noted earlier, to assess the extent to which the Internal Revenue Service (IRS) evaluates management of dispute resolution cases, we interview IRS officials. Having determined that the Advanced Pricing Mutual Agreement Program (APMA) does not conduct analysis of mutual agreement procedure (MAP) case data, we used information from its existing inventory data to illustrate the types of analysis that may be possible. The inventory database APMA provided us contained all MAP cases that were closed from 2013 to 2017, as well as the current stock of open MAP cases. Because of a change in the method of recording the outcome variable between 2013 and 2014, we restricted our analysis of outcomes to 2014 to 2017.

The inventory database did not include a variable for the tax issue in dispute. To illustrate the type of analysis that could be conducted if the tax issue were recorded we collected a sample of MAP case files. To estimate features such as tax issue and outcome for the inventory database, we selected a generalizable random sample of 84 cases that was proportionally allocated across four strata described in table 4.¹ The strata included whether the initiating country was U.S. or Non-U.S. and whether an Economist was involved. This sample was selected from the population frame that consists of all files from APMA 2013-2017 Resolved and 2017 Pending inventory for cases resolved in years 2015 to 2017. Overall, this sample was designed to produce 95 percent confidence intervals for percentage estimates that are within approximately +/- 10 percentage points. The sample is not designed to provide estimates for other reporting groups at the same level of precision, and all margins of error are reported along with estimates.

¹Although 84 cases were randomly sampled from the population, two cases in strata 1 are not included in our data analysis as they were inadvertently left out of our data request due to a processing error unrelated to the attributes of the cases themselves. We therefore consider these two cases to be missing at random and treat the remaining 82 cases as our random sample.

Table 4: Confidence Intervals at 95% for Total Tax Issue Categories of Sample of MAP Case Files

Strata	Country	Economist	Population Counts	Sample Size
1	U.S.	Economist	31	10
2	U.S.	Economist	108	20
3	Non-U.S.	No Economist	42	10
4	Non-U.S.	No Economist	324	44
Total	n/a	n/a	505	84

Source: GAO analysis of Internal Revenue Service data. | GAO-19-81.

To create a tax issue variable, we reviewed the summary of competent authority issues required by Rev.Proc. 2015-40 to be included in the MAP request letter.² We then allocated the tax issue described in the narrative to APMA’s advanced pricing agreement transaction categories. Some case files included multiple tax issues, but these cases accounted for less than 18 percent of the sample. The illustrations provided rely on the first tax issue noted in the narrative. Table 5 provides the estimates and margins of error for the categories.

Table 5: Confidence Intervals at 95% for Total Tax Issue Categories of Sample of MAP Case Files

Tax Issue	Percent of Cases	Lower Bound	Upper Bound
Sale of Tangible Property from the U.S.	7.1	2.6	15.0
Sale of Tangible Property into the U.S.	7.7	2.9	15.7
Use of Intangible Property by a U.S. Entity	0.9	0.0	6.6
Use of Intangible Property by a Non-U.S. Entity	15.2	8.3	24.9
Provision of Services by a U.S. Entity	23.9	15.2	34.6
Provision of Services by a Non-U.S. Entity	37.8	28.5	47.1

Source: GAO analysis of Internal Revenue Service data. | GAO-19-81.

²Earlier versions of United States Competent Authority revenue procedures had a similar narrative requirement.

Appendix II: Comments from the Internal Revenue Service

Appendix II: Comments from the Internal Revenue Service



DEPUTY COMMISSIONER

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

February 14, 2019

Mr. James R. McTigue
Director, Tax Issues
Strategic Issues Team
U.S. Government Accountability Office
441 G Street N.W.
Washington, DC 20548

Dear Mr. McTigue:

Thank you for providing your draft report, *Opportunities Exist to Improve IRS's Management of International Tax Disputes* (GAO-19-81, Job Code 102038), for our review and comments. We appreciate the opportunity to comment on the role the IRS serves as delegated U.S. competent authority ("USCA") in resolving mutual agreement procedure ("MAP") cases under U.S. income tax treaties.

As USCA, the IRS endeavors to resolve MAP cases with treaty partners in a manner that respects principles for allocating income under U.S. tax treaties, prevents fiscal evasion, and provides taxpayers broad access to competent authority assistance. The GAO's report focuses on how the IRS's Advance Pricing and Mutual Agreement Program ("APMA"), one of several programs administered by the office of the USCA, carries out this mission with respect to transfer pricing cases. We are pleased to see the GAO recognizes the scope and expertise of the assistance APMA provides, which extends to more than 600 U.S. corporate taxpayers with cases involving more than 20 major U.S. treaty and trading partners.

The IRS agrees with the GAO that program resource management and clarity of taxpayer communication should be paramount. The USCA has been addressing these issues independently of and prior to the GAO's review. Since 2015, the USCA has been working to improve its procedures and practices in order to not just meet, but exceed, the internationally adopted minimum standard on MAP case processing established by Action 14 (*Improving Dispute Resolution*) of the Organization for Economic Co-Operation and Development's ("OECD's") Base Erosion and Profit Shifting Project. In 2017, the USCA received favorable reviews of its handling of the MAP process from its OECD peers. We appreciate GAO's recommendations, as we are continuously seeking opportunities for further enhancing the service we offer through our programs.

2

We reviewed your eight (8) recommendations and agree that there are opportunities for improvement in our APMA program. We are in the process of identifying specific actions the IRS could take to effectively implement the recommendations and the availability of information technology resources that would be needed to do so. We will provide detailed corrective action plans in our 60-day letter response to Congress.

If you have any questions, please contact me, or a member of your staff may contact Jennifer L. Best, Director, Large Business and International Division, Treaty and Transfer Pricing Operations, at (202) 317-8511.

Sincerely,



Kirsten B. Wielobob
Deputy Commissioner for
Services and Enforcement

Appendix III: Illustrative Examples of Dispute Resolutions

The following tables illustrate how a resolution can be reached in different types of disputes. Table 6 provides a hypothetical example of U.S.-initiated adjustment to a transfer price and a resolution that provides full relief from double taxation through a combination of partial withdrawal and correlative relief. In this example, the U.S. multinational corporation (MNC) parent sells a product to its subsidiary incorporated in a foreign country for \$1,000. The U.S. parent is taxed on the income of \$1,000 from the sale and the subsidiary is able to deduct that payment.

The U.S. tax authority audits the parent's return and determines that the price the parent sold the product for was too low and adjusts to price up from \$1,000 to \$2,000, resulting in an increase in taxable income. The U.S. MNC parent disputes the adjustment and requests assistance from the U.S. Competent Authority (USCA). The new adjusted transfer price results in \$1,000 that is subject to double taxation because the foreign subsidiary has not deducted the additional \$1,000 as the price paid to the U.S. parent, while the U.S. tax authority is now considering that income taxable.

USCA negotiates with the foreign competent authority and the two parties agree on a revised transfer price of \$1,600. The negotiated resolution results in USCA agreeing to withdraw \$400 of the original adjusted amount of the transfer price. In turn, the foreign competent authority agrees to correlative relief in the form of an increased deduction of \$600 of the additional price that the foreign subsidiary will pay the U.S. parent. The taxpayer receives full relief from double taxation since the total of the withdrawal and the correlative relief erases the \$1,000 of double-taxed income that resulted from the increased adjustment.

Table 6: Full Relief Provided When the U.S. Tax Authority Adjusts Transfer Price of Sale from U.S. Parent to its Foreign Subsidiary

Actions	U.S. Taxable Income	Double taxed income
U.S. MNC sets original transfer price	1,000	0
U.S tax authority adjusts price upward	2,000	1,000
U.S. and Foreign Competent Authorities negotiate resolution:	1600	n.a
U.S. competent authority withdraws \$400 of its adjustment	n.a	(400)
Foreign competent authority concedes \$600 and provides correlative relief	n.a	(600)

Legend: n.a. = not applicable

Source: GAO. | GAO-19-81.

Alternatively, foreign tax authorities can make adjustments that affect a U.S. taxpayer. Table 7 provides a hypothetical example of a foreign initiated adjustment to a cost-sharing arrangement, and a resolution that provides full relief from double taxation, again, through a combination of partial withdrawal and correlative relief.

In this scenario, the U.S. parent and its foreign subsidiary agree to share the costs of developing a product that will yield income of \$10,000. As part of the agreement, the subsidiary will receive 10 percent of the income yield while the parent will receive 90 percent.

The foreign tax authority audits the subsidiary’s tax return and determines that the amount of income assigned to the subsidiary is too low. It then adjusts the percentage to 50 percent, increasing the income allocated to the subsidiary from \$1,000 to \$5,000. This adjustment results in a potential \$4,000 of income that is now subject to double taxation. The subsidiary decides that resolving this dispute locally is unlikely and through the U.S. parent requests assistance from USCA.

USCA and the foreign competent authority negotiate a new allocation of 35 percent resulting in new income allocated to the subsidiary of \$3,500. This resolution results in a combination of withdrawal and correlative relief. The competent authority agrees to withdraw \$1,500 of the adjustment as income to the subsidiary, and the U.S. competent authority agrees to reduce the amount taxable to the parent by \$2,500. The taxpayer receives full relief from double taxation since the total of the

withdrawal and the correlative relief erases the \$4,000 of double-taxed income that resulted from the increased adjustment.

Table 7: Full Relief Provided when a Foreign Tax Authority Adjusts the Income Share Allocated to U.S.-Owned Foreign Subsidiary

Actions	Income Share	Foreign Taxable Income	Double-Taxed Income
U.S. MNC sets original income share	10%	1,000	0
Foreign tax authority adjusts share upward	50%	5,000	4,000
U.S. and Foreign Competent Authorities negotiate resolution:	35%	3,500	n.a
Foreign competent authority withdraws \$1,500 of its adjustment	n.a	n.a	(1,500)
U.S. competent authority concedes \$2,500 and provides correlative relief	n.a	n.a	(2,500)

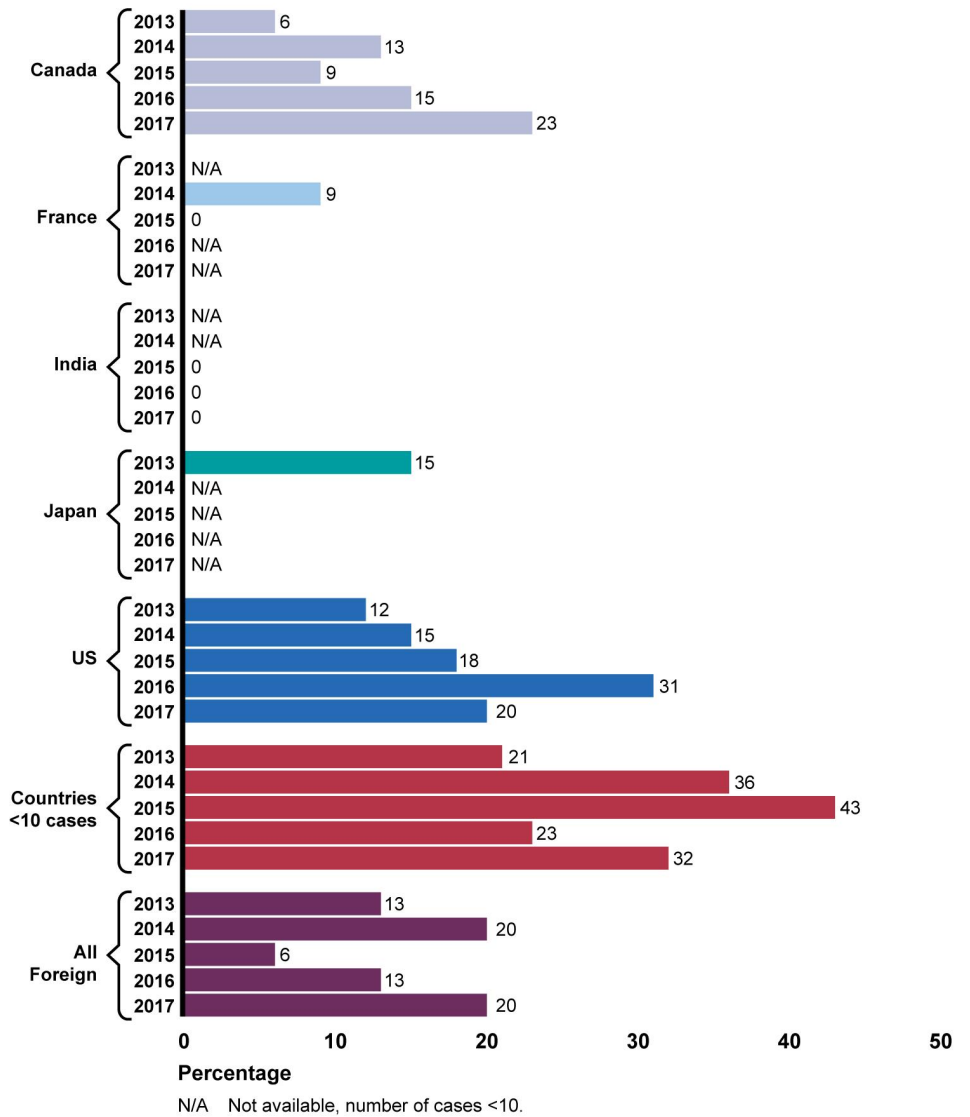
Legend: n.a. = not applicable

Source: GAO. | GAO-19-81.

Appendix IV: Examples of Analysis that Advanced Pricing and Mutual Agreement Program Could Do with Current Available Data

All mutual agreement procedure (MAP) cases are not the same in terms of complexity. One possible indicator of complexity is whether an economist was assigned to a case. United States Competent Authority (USCA) ranks the cases in order of complexity and assigns economists to the more complex cases. Our analysis of Advanced Pricing and Mutual Agreement Program (APMA) data in figure 8 shows how the use of economists varies by source of MAP cases. For most years, APMA assigned economists to a higher percentage of cases that involved U.S. than Canadian initiated adjustments. For most years, the share of economists assigned to foreign initiated cases was similar to U.S. initiated cases. However, in 2015 and 2016 the share of U.S. cases receiving an economist was more than double that of all foreign initiated cases. For most years, an economist was assigned to less than a quarter of foreign and U.S. MAP cases.

Figure 8: Share of MAP Cases Assigned an Economist by Country, 2013-2017

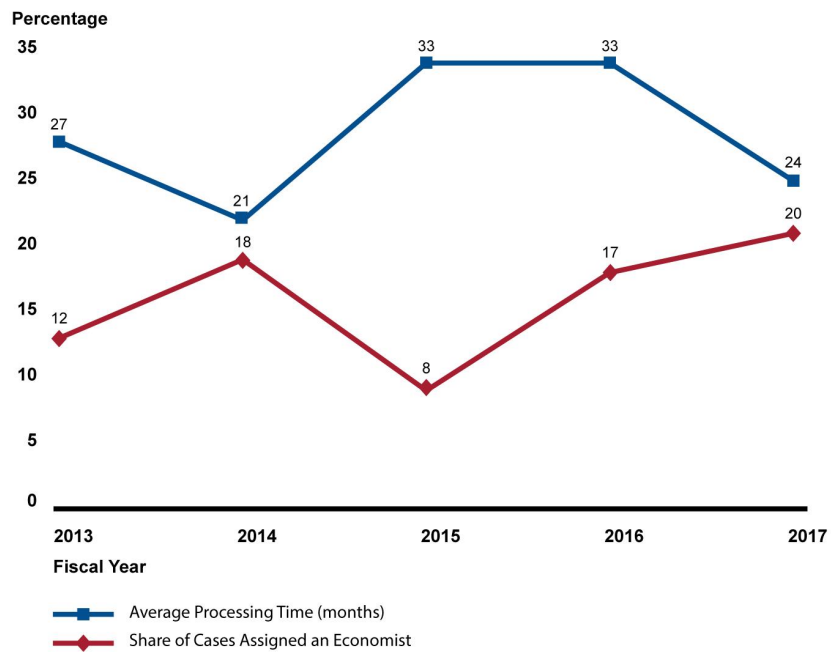


Source: GAO analysis of Internal Revenue Service data. | GAO-19-81

We also analyzed USCA inventory data to compare the percentage of cases that were assigned an economist and the average time it took to resolve cases. As figure 9 shows, the average time a case was in processing tends to decrease when the percentage of cases that are assigned an economist increases. This relationship suggests that assigning economists to a case may reduce the time it takes to resolve it

despite the greater complexity of the case. However, there may be many other factors that could influence processing time. APMA officials noted that many these factors include the readiness of the foreign competent authority to discuss the case in a timely fashion. Further analysis would be necessary to isolate the effects of specific resource allocation changes on process efficiency.

Figure 9: Share of MAP Cases with an Economist and Average Processing Time, 2013 - 2017



Source: GAO analysis of Internal Revenue Service data. | GAO-19-81

Appendix V: GAO Contact and Staff Acknowledgments

GAO Contact

James R. McTigue, Jr., (202) 512-9110, mctiguej@gao.gov

Staff Acknowledgements

In addition to the contact named above, Kevin Daly (Assistant Director), Jennifer G. Stratton (Analyst-in-Charge), Bertha Dong, Dawn Bidne, Michael Bechetti, Sonya Vartivarian, Ed Nannenhorn, David Dornisch, and A.J. Stephens made significant contributions to this report.

Appendix VI: Accessible Data

Data Tables

Accessible Data for Figure 2: Number of Resolved MAP Cases by Selected Country that Made an Adjustment, 2013-2017

Country	2013	2014	2015	2016	2017
Canada	65	46	54	53	44
France	N/A	11	10	N/A	N/A
India	N/A	N/A	93	32	18
Japan	13	N/A	N/A	N/A	N/A
US	41	48	22	32	85
Countries <10 cases	42	28	14	26	22
All Foreign	120	85	171	111	84

Accessible Data for Figure 3: Average Time in Months to Complete MAP Cases by Selected Country, 2013-2017

Initiating Country	2013	2014	2015	2016	2017
Canada	25	22	25	28	25
France	N/A	24	16	N/A	N/A
India	N/A	N/A	38	36	37
Japan	24	N/A	N/A	N/A	N/A
US	25	15	31	34	19
Countries <10 cases	32	31	40	38	31
All Foreign	27	25	33	32	29

Accessible Data for Figure 4: Share of MAP Cases Partially Resolved by the United States, 2014-2017

Initiating Country	2014	2015	2016	2017
Canada	33%	48%	64%	77%
France	45%	40%	N/A	N/A
India	N/A	50%	81%	78%
Japan	N/A	N/A	N/A	N/A

Initiating Country	2014	2015	2016	2017
US	19%	36%	25%	9%
Countries <10 Case	61%	50%	54%	36%
All Foreign	44%	71%	67%	67%

Accessible Data for Figure 5: Share of MAP Cases Resolved Entirely by the United States, 2014-2017

Initiating Country	2014	2015	2016	2017
Canada	13%	15%	11%	9%
France	36%	50%	N/A	N/A
India	N/A	33%	0%	0%
Japan	N/A	N/A	N/A	N/A
US	58%	41%	28%	74%
Countries <10 Case	11%	14%	0%	14%
All Foreign	20%	9%	8%	12%

Accessible Data for Figure 6: Estimated Percentage of Types of Tax Issues for All Cases Based on Our Sample of MAP Cases Resolved between 2015 and 2017.

Category	Percentage
Use of intangible by US Entity	1%
All Other Covered Transactions	7%
Sale of Tangible Property from the U.S.	7%
Sale of Tangible Property into the U.S	8%
Use of intangible by Non U..S Entity	16%
Provision of Service by U.S. Entity	24%
Provision of Service by Non-US Entity	37%

Accessible Data for Figure 7: Percentage of Types of Transactions Covered by Advanced Pricing Agreements in 2014

Category	Percentage
Use of Intangible Property by a U.S. Entity	12%
Use of Intangible Property by a Non-U.S. Entity	12%
Sales of Tangible Property from the U.S.	13%
Performance of Services by a Non-U.S. Entity	18%

Category	Percentage
Performance of Services by a U.S. Entity	22%
Sales of Tangible Property into the U.S.	23%

Accessible Data for Figure 8: Share of MAP Cases Assigned an Economist by Country, 2013-2017

Initiating Country	2013	2014	2015	2016	2017
Canada	6%	13%	9%	15%	23%
France	N/A	9%	0%	N/A	N/A
India	N/A	N/A	0%	0%	0%
Japan	15%	N/A	N/A	N/A	N/A
US	12%	15%	18%	31%	20%
Countries <10 cases	21%	36%	43%	23%	32%
All Foreign	13%	20%	6%	13%	20%

Accessible Data for Figure 9: Share of MAP Cases with an Economist and Average Processing Time, 2013 – 2017

Category	2013	2014	2015	2016	2017
Average Processing Time	27	21	33	33	24
Share of Cases Assigned	12	18	8	17	20

Agency Comment Letter

Accessible Text for Appendix II Comments from the Internal Revenue Service

Page 1

February 14, 2019

Mr. James R. McTigue

Director, Tax Issues Strategic Issues Team

U.S. Government Accountability Office

441 G Street N.W.

Washington, DC 20548

Dear Mr. McTigue:

Thank you for providing your draft report, Opportunities Exist to Improve IRS's Management of International Tax Disputes (GAO-19-81, Job Code 102038), for our review and comments. We appreciate the opportunity to comment on the role the IRS serves as delegated U.S. competent authority ("USCA") in resolving mutual agreement procedure ("MAP") cases under U.S. income tax treaties.

As USCA, the IRS endeavors to resolve MAP cases with treaty partners in a manner that respects principles for allocating income under U.S. tax treaties, prevents fiscal evasion, and provides taxpayers broad access to competent authority assistance. The GAO's report focuses on how the IRS's Advance Pricing and Mutual Agreement Program ("APMA"), one of several programs administered by the office of the USCA, carries out this mission with respect to transfer pricing cases. We are pleased to see the GAO recognizes the scope and expertise of the assistance APMA provides, which extends to more than 600 U.S. corporate taxpayers with cases involving more than 20 major U.S. treaty and trading partners.

The IRS agrees with the GAO that program resource management and clarity of taxpayer communication should be paramount. The USCA has been addressing these issues independently of and prior to the GAO's review. Since 2015, the USCA has been working to improve its procedures and practices in order to not just meet, but exceed, the internationally adopted minimum standard on MAP case processing established by Action 14 (Improving Dispute Resolution) of the Organization for Economic Co-Operation and Development's ("OECD's") Base Erosion and Profit Shifting Project. In 2017, the USCA received favorable reviews of its handling of the MAP process from its OECD peers. We appreciate GAO's recommendations, as we are continuously seeking opportunities for further enhancing the service we offer through our programs.

Page 2

We reviewed your eight (8) recommendations and agree that there are opportunities for improvement in our APMA program. We are in the process of identifying specific actions the IRS could take to effectively implement the recommendations and the availability of information technology resources that would be needed to do so. We will provide detailed corrective action plans in our 60-day letter response to Congress.

If you have any questions, please contact me, or a member of your staff may contact Jennifer L. Best, Director, Large Business and International Division, Treaty and Transfer Pricing Operations, at (202) 317-8511.

Sincerely,

Kirsten B. Wielobob

Deputy Commissioner for

Services and Enforcement

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