Tax Dispute Resolution Timelines - United States

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# Key contacts

# National Procedures

## Last Updated

1 February 2023

## 1. When is the first appeal deadline following disagreement of the assessment made by the tax authorities?

Upon receipt of a 30-day letter, a taxpayer has 30 days to request that the Internal Revenue Service (IRS) Independent Office of Appeals consider the case, subject to limited extensions by agreement. The IRS generally grants extensions of time if requested in reasonable circumstances.

## 2. What is the appealing procedure?

**Within the national tax authority:** Generally, a taxpayer must file a written protest to request administrative appeals consideration.

During the appeals process, the parties may request additional alternative dispute resolution options, including, the rapid appeals process, mediation and arbitration, or in the case of transfer pricing and treaty interpretations, competent authority review. A request to sever a competent authority issue must be made within 60 days of the opening conference with appeals under Rev. Proc. 2015-40. The taxpayer can request concurrent consideration by appeals and competent authority or seek resolution of the matter only with competent authority (see the competent authority process under question 4 below).

If a matter cannot be resolved in appeals, a 90-day letter will be issued and the taxpayer can take the issue to court, as described below.

**Within the national court system:** If a taxpayer fails to or chooses not to pursue appeals, a 90-day letter or notice of deficiency is issued. Further, if appeals and the taxpayer cannot come to an agreement, a notice of deficiency is issued. The 90-day period is extended to 150 days if the taxpayer's address on the notice of deficiency is outside the country. The taxpayer then has the option to:

1.  file a petition with the US Tax Court to contest the tax deficiency within 90 days of the notice of deficiency
2.  pay the tax assessed and file a suit for refund in a refund forum (i.e., a federal district court or the US Court of Federal Claims)

If a case is docketed without prior appeals consideration, appeals may consider the case for settlement at the taxpayer's request and with the approval of counsel.

After the trial court rules on the issue, an adversely affected party may appeal the court's decision to the appropriate US Circuit Court of Appeals and, similarly, from there may petition for writ of certiorari with the Supreme Court of the United States.

## 3. What is the average time for reaching a final national decision?

10+ years

The average time to reach a final decision for large tax cases for IRS appeals: one-three years.

If the taxpayer appeals through all levels of the federal court system, a "final" national decision could take 10+ years in a complex tax matter.

Mutual agreement procedure (MAP) process: four-six years.

## 4. How do the national tax dispute resolution proceedings interact with the international tax dispute resolution proceedings?

**a. Start:** Within 60 days of the opening conference with appeals, a taxpayer may request competent authority assistance. Generally, the specific treaty provides the deadline for requesting relief. In certain cases, a taxpayer must submit a pre-filing memorandum prior to filing a competent authority request.

**b. Conduct of the proceedings:** The US competent authority conducts the competent authority process through the office of the Advance Pricing and Mutual Assistance Program ("APMA Program"). The APMA Program has primary responsibility for cases arising under the business profits and associated enterprises articles of US tax treaties. The APMA Program can consider cases arising under permanent establishment, transfer pricing and treaty interpretation issues.

Subject to the arbitration provisions of US tax treaties, the US competent authority will allow a taxpayer a reasonable opportunity to present and supplement its views of the relevant facts and arguments, both in writing and orally, before and after discussions with the foreign competent authority have commenced.

A taxpayer can withdraw its competent authority request at any time, either in full or with respect to particular competent authority issues.

**c. Completion of proceedings:** If the US and foreign competent authorities reach a tentative competent authority resolution, it will be presented to the taxpayer for consideration. The taxpayer is given the opportunity to respond affirmatively in a timely manner. If the taxpayer rejects the tentative agreement, jurisdiction over the competent authority issues returns to the relevant offices within the IRS, and the taxpayer may pursue other administrative and judicial remedies. Generally, if the taxpayer accepts the tentative resolution, it must accept the resolution of that issue for all of the covered years. When the competent authority resolution is finalized, the IRS will implement the terms and may request that the taxpayer execute a closing agreement reflecting the terms.

**d. Other actions:** An increasing number of treaties contain arbitration provisions that provide that if an MAP resolution is not reached within the specified time frame (generally two years), treaty cases could be submitted to arbitration. To protect against time limits and procedural limitations in treaty countries, taxpayers may need to file protective claims in certain cases. Applicable procedures are discussed in Rev. Proc. 2015-40 § 11.

## 5. Are administrative appeal procedures compulsory or optional prior to a judicial procedure?

Optional

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# Contributors

## Contact(s)

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