

# IRS User Fees for APAs Increase but Remain Attractive

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In this post, Martin and Bettge discuss recent increases in user fees for advance pricing agreement applications.

Because advance pricing agreements (APAs) — upfront agreements between a taxpayer and one or more governments regarding transfer pricing issues — involve the dedication of substantial IRS resources to benefit a single taxpayer, they entail a user fee payable to the IRS to offset the cost of those resources. Prior user fee increases under the latest APA revenue procedure, [Rev. Proc. 2015-41](#), 2015-35 IRB 263, had been preceded by a public announcement. Breaking with that precedent, the IRS Advance Pricing and Mutual Agreement program (APMA) did not announce the user fee increase for APA applications that became effective February 1.

Perhaps the reason the fee increase was not announced has to do with its relatively modest magnitude: The user fee for a new APA increased about seven percent, from \$113,500 to \$121,600, and the user fees for other types of APAs increased in similar proportion. By contrast, when user fee increases were [announced](#) six years ago in February 2018, the fees almost doubled by the end of the year, with an initial phase-in in June 2018 followed by a further increase as of December 31, 2018.

	Fees per Rev. Proc. 2015-41	% Increase	Fees as of 6/30/2018	% Increase	Combined % Increase for 2018	Fees as of 12/31/2018	% Increase	Fees as of 2/1/2024
<b>New APA</b>	60,000	45%	86,750	31%	89%	113,500	7%	121,600
<b>Renewal APA</b>	35,000	39%	48,500	28%	77%	62,000	6%	65,900
<b>Small Case APA</b>	30,000	40%	42,000	29%	80%	54,000	6%	57,500
<b>Amendment</b>	12,500	42%	17,750	30%	84%	23,000	7%	24,600

The 2018 increases had a significant effect on taxpayer behavior, motivating many taxpayers to seek APAs before the new fees came into effect. (For further discussion of the 2018 statistics, see Mark Martin, Mark Horowitz, and Thomas Bettge, "[2018 APMA Report Shows Applications increase, but Processing Times Stagnate](#)," *Tax Notes*, Apr. 15, 2019). Indeed, [2018](#) remains the high-water mark for APA applications as of the [most recent statistics](#), with 203 applications filed, in addition to 71 "dollar filings" that took advantage of a rule found in section 3.03(3)(b) of Rev. Proc. 2015-41 that backdates the deemed file date of an APA request to the date the user fee was paid if a complete request is received within 120 days.

Even if an announcement had been made for the recently increased user fees, it almost certainly would not have occasioned a comparable rush to file. By using the Bureau of Labor Statistics' [CPI Inflation Calculator](#), a rough comparison of the 2024 increase to inflation since 2018 shows that, in terms of inflation-adjusted dollars, APA filings have actually become cheaper notwithstanding the recent increase. The following table compares the actual increase in 2024 against a hypothetical increase to keep pace with inflation.

	Fees as of 12/31/2018	% Inflation Increase (Hypothetical)	Hypothetical Fees	% Increase (Actual)	Actual Fees as of 2/1/2024

<b>New APA</b>	113,500	23%	139,334	7%	121,600
<b>Renewal APA</b>	62,000	23%	76,112	6%	65,900
<b>Small Case APA</b>	54,000	23%	66,291	6%	57,500
<b>Amendment</b>	23,000	23%	28,235	7%	24,600

Interest in APAs has been high in recent years. 2022 saw the highest level of APA applications for any year since 2018's high water mark, with 183 filed requests and a further 34 dollar filings. While the statistics have not yet been released, there is no sign that the trend has slowed in 2023, despite concerns that the [revised APA acceptance guidance](#) released in April 2023 would reduce the number of APAs accepted into the APA program. The IRS quickly moved to dispel those concerns through public comments from IRS officials, who made clear that the guidance was not intended to reduce the number of APAs accepted into the program.

The current transfer pricing enforcement environment should continue to generate ongoing interest in upfront transfer pricing certainty through APAs. Pillar 2 relies on the taxpayer having correct underlying transfer pricing; if a tax authority later makes an adjustment to a taxpayer's transfer pricing for an earlier year, the results could be chaotic — the pillar 2 rules, as they stand, do not adequately protect against double taxation. (For more on that, see Alistair Pepper, Quyen Huynh, and Samira Varanasi, "Transfer Pricing Implications of Pillar Two Minimum Tax Rules," *Tax Management International Journal*, Dec. 14, 2023.) Tax administrations around the world continue to vigorously pursue transfer pricing enforcement, with the IRS having launched in late 2023 a new campaign targeting inbound distributors reporting losses or low profits. Under these circumstances, it is unlikely that the 2024 fee increases, which represent less than half the amount of inflation since fees were last updated in 2018, will dissuade taxpayers that would otherwise be interested in the APA program.

The IRS's prefiling agreement ("PFA") program provides an interesting counterpoint. Like APAs, PFAs provide an opportunity to obtain upfront certainty on an issue, although as section 3.08[1] of [Rev. Proc. 2016-30](#), 2016-21 IRB 981, provides, PFAs cannot be used for transfer pricing issues. In a PFA, the taxpayer requests that the IRS examine a specific issue in collaboration with the taxpayer, with the goal of reaching agreement on the correct treatment of the issue prior to the filing of the taxpayer's return for the year. Because PFAs, like APAs, involve the dedication of IRS resources to a single taxpayer at the taxpayer's request, they also involve a user fee.

However, as Appendix A to [Rev. Proc. 2024-1](#), 2024-1 IRB 1, provides, the user fee for a PFA is much higher: \$181,500. PFAs do frequently involve large IRS teams with a number of specialists, but they also have an inherently limited timeline, as opposed to APAs, which can take a number of years for the IRS and its treaty partners to negotiate. In this respect, the PFA user fee seems too high. Indeed, the user

fee may be a significant deterrent to the potentially valuable but drastically underutilized program, which as of 2022 had only accepted nine applications total across a four-year period. As the IRS looks to encourage the use of alternative dispute resolution, a more logical, lower user fee for the PFA program might be needed.