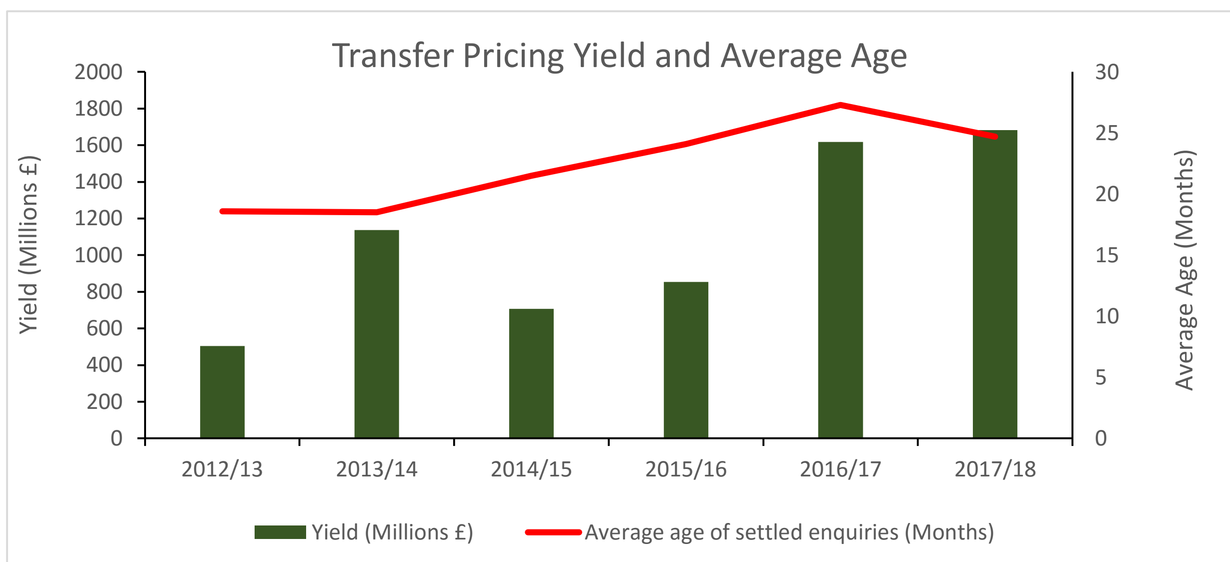
Transfer Pricing and Diverted Profits Tax statistics

The Transfer Pricing rules and the Diverted Profits Tax are important elements in a range of measures to make sure multinationals pay the right amount of tax on the share of their profits that belong to the UK.

Transfer Pricing

The UK's Transfer Pricing rules set out how transactions between connected parties are priced for tax purposes. This includes transactions between companies in the same group. The rules ensure that the UK can tax its share of profits in accordance with the internationally recognised transfer pricing principle (known as the arm's length principle).

HMRC challenges arrangements that do not allocate the right amount of profits (the arm's length amount) to the UK. In the years from 2012/13 to 2017/18, HMRC secured **£6.5 billion of additional tax**[1] by challenging the transfer pricing arrangements of multinationals.



Year	2012/ 13	2013/14	2014/15	2015/16	2016/17	2017/18
Total Amount	£504 m	£1,137m	£707m	£853m	£1,618m	£1,682m

[1] *Some of this additional tax was secured as a result of HMRC's investigations into arrangements within the scope of the DPT legislation, where businesses have adjusted the transfer pricing on those arrangements during the investigation.*

12 months to 31/3	2013	2014	2015	2016	2017	2018
Average age open enquiries (months)	18.6	18.5	21.5	24.1	27.3	30.4
Average age settled enquiries (months)	24.6	25.3	22.4	27.6	28.8	24.7
50% open less than (months)	15.4	15.3	15.9	17.3	21.4	19.7
50% settled within (months)	20.6	21.0	21.2	24.8	29.4	20.6

HMRC has increased the number of staff dealing with international tax risks, including transfer pricing. As at 30 April 2018, there were **365** full time equivalent staff working on international risks, including transfer pricing and diverted profits tax. HMRC recognises the importance of identifying and tackling international tax risks and is invested in building the capability of the staff involved. These skilled staff work with other expert industry and tax specialists to tackle those cases that represent a substantial risk of tax loss to the Exchequer in line with HMRC's "resource to risk" compliance policy.

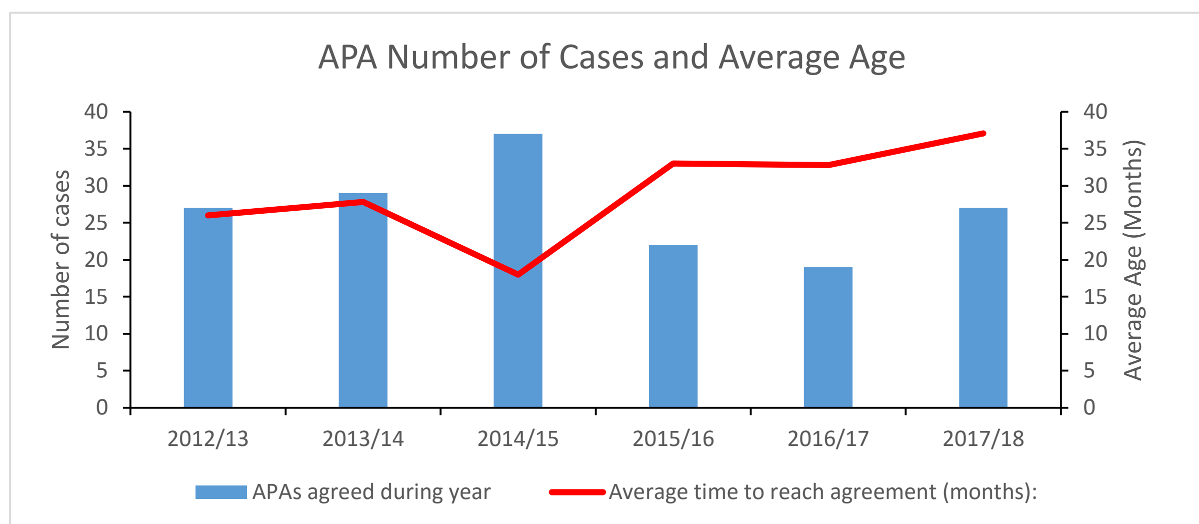
We also work with other tax authorities, sharing information and expertise, to identify risk and challenge arrangements. **Country by Country reports** will increase the information available to support HMRC's risk assessment processes.

An **Advanced Pricing Agreement (APA)** is a written agreement between a business and HMRC which determines the appropriate transfer pricing method to be applied to certain transactions for a set period and in advance of a tax return being made. APAs are recognised as international best practice by the OECD in managing compliance with transfer pricing rules[2]. They help tax authorities, including HMRC, to establish early on how transfer pricing rules apply to complex cross-border transactions. They provide multinational businesses with greater certainty about their tax liabilities so that they pay the right amount of tax at the right time and help to ensure that a business does not pay tax more than once on the same profits. An APA does not provide any special treatment or change the amount of tax due under the law.

A revised Statement of Practice, published in November 2016, explains how HMRC applies the APA legislation and operates the UK APA programme. The UK's approach is primarily to work with the tax administrations of other countries to make bilateral, or multilateral agreements. This requires discussion and negotiation with treaty partners which impacts on the time taken to reach agreement. This year

[2] Number 4 of the OECD/ G20 Base Erosion and Profit Shifting (BEPS) Action Item 14 Final Report ("Making Dispute Resolution More Effective") recommends that *"countries should implement bilateral APA programmes"*

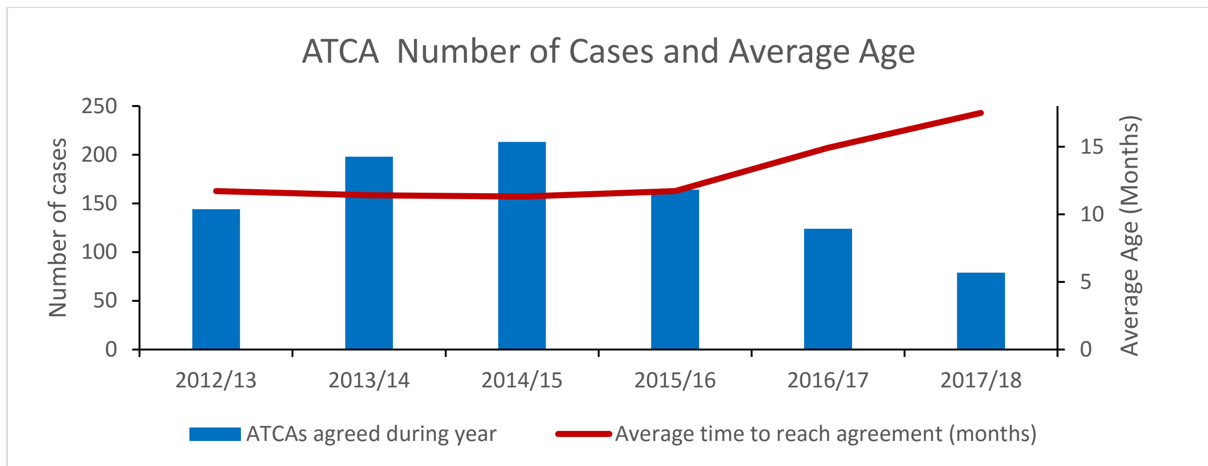
HMRC has agreed 27 APAs. These will generally be the most complex ones with genuine areas of uncertainty and risk of double taxation.



	2012/13	2013/14	2014/15	2015/16	2016/17	2017/18
Applications made during year	45	43	66	47	32	16
Applications turned down	0	0	2	3	5	6
APAs agreed during year	27	29	37	22	19	27
Average time to reach agreement (months):	26	27.8	18.00	33.0	32.8	37.1
50% agreed within (months):	15	19.7	15.6	32.3	34.7	35.1

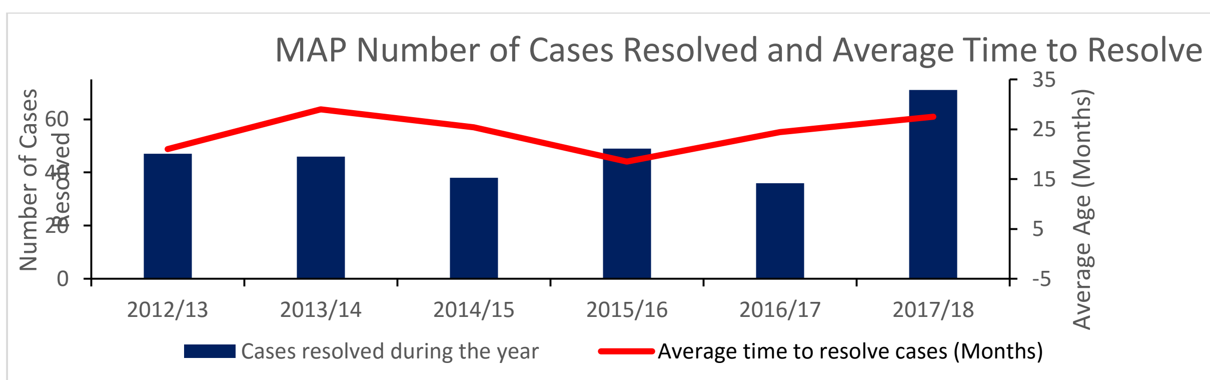
An **Advance Thin Capitalisation Agreement** (ATCA) is an agreement between a business and HMRC which sets out how the transfer pricing rules apply to funding issues, including the appropriate levels, terms and conditions of debt financing between connected parties, so that the UK receives the right amount of tax at the right time. An ATCA is a form of APA and, like all APAs, it enables tax authorities to examine certain transactions and agree the appropriate transfer pricing position earlier than the usual tax return/assessment cycle would allow; it does not change the amount of tax a business must pay.

Statement of Practice 1/2012 explains HMRC's approach. Detailed practical guidance is contained in the international manual



	2012/13	2013/14	2014/15	2015/16	2016/17	2017/18
ATCAs agreed during year	144	198	213	164	124	79
Agreements in force during year	414	510	577	568	479	366
Average time to reach agreement: (months)	11.7	11.4	11.3	11.7	14.9	17.5
50% agreed within (months):	9.7	10.4	10.5	9.7	13.7	16.2

Most double taxation agreements include a **mutual agreement procedure** (MAP) article allowing tax administrations to resolve cases of double taxation by consultation and mutual agreement. A revised Statement of Practice 1/2018 and guidance in the International Manual were published at the start of the year. These outline HMRC's procedure in relation to the elimination of double taxation under MAP and/or the EU Arbitration Convention. The majority of cases require HMRC to work with tax administrations in other countries to determine each country's taxing rights, which affects the time needed to resolve these cases.



	2012/13	2013/14	2014/15	2015/16	2016/17	2017/18
Cases resolved during the year	47	46	38	49	36	71
Cases admitted during the year	40	61	71	71	80	103[3]
Average time to resolve cases (months)	21	29	25.4	18.5	24.4	27.5

The 2017 MAP Peer Review recognises the current strengths of MAP in the UK, showing that the UK is a good treaty partner with a well-resourced team which takes a principled and pragmatic approach to MAP. The UK has worked to address any issues, for example, updating its MAP guidance.

Arbitration

HMRC is committed to making use of the full range of disputes resolution tools, recognises the value of arbitration and will participate in appropriate cases.

Diverted Profits Tax

The Diverted Profits Tax (DPT) is designed to encourage large companies that try to minimise their tax liabilities through the use of contrived arrangements to change their behaviour, or face paying tax at a higher rate. It is not targeted specifically at any particular sectors or companies, but rather at particular behaviours and arrangements.

DPT Yield

Year	2015/16	2016/17	2017/18
Total Amount	£31m	£281m	£388m

The figures of DPT yield reflect amounts received as a result of DPT charging notices issued by HMRC, and additional amounts of Corporation Tax resulting from behavioural change. The amount raised from the issue of DPT charging notices during 2017/18 was £219 million[4].

[3] *This represents the number of MAP cases HMRC has recorded as beginning during the 2017/18 year. The OECD MAP Statistics Reporting Framework report uses the calendar year and includes non transfer pricing cases. The reports are published on the OECD website: http://www.oecd.org/tax/dispute/mutual-agreement-procedure-statistics-2016-per-country-all.htm HMRC records sufficient information to allow it to meet all of its OECD reporting obligations.*

[4] This is the amount of cash received (net of repayments) during the financial year 17/18, in line with the agreed National Accounts Treatment for DPT

The behavioural change component of DPT yield is comprised of two elements. The first is additional Corporation Tax paid as a result of HMRC intervention to ensure that profits earned in the UK are taxed in the UK.

The second element is the behavioural change where, as intended, businesses have changed their structures or transfer pricing arrangements without an HMRC intervention occurring. This means they pay additional Corporation Tax rather than DPT at the higher rate.[5]

The anticipated Exchequer impact of DPT at the March Budget 2015 was £360 million in 2017/18 and, comprising DPT receipts and additional Corporation Tax arising from behavioural change[6].

DPT Procedures

Notifications

Companies have to notify HMRC if they have arrangements that potentially fall within the scope of the DPT legislation, subject to limited statutory exceptions. More than one company within a multinational group may need to notify.

	2015/16	2016/17	2017/18
DPT notifications received	48	145	220

The numbers above are the DPT notifications and analyses HMRC has received from groups where one or more companies within the group have indicated that they are involved in arrangements that may be in scope of the DPT legislation. The obligation to notify does not necessarily mean that a DPT charge will arise.

Notices

Where HMRC believes that DPT may be due, a preliminary notice is issued. Depending on the company's response, HMRC may then issue a charging notice setting out the amount of DPT to be paid by the company within 30 days.

Companies have 6 months from the end of the relevant accounting period to notify HMRC that they are potentially within scope of the legislation. HMRC then has 2

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[5] This paper sets out how HMRC measures the yield from DPT https://www.gov.uk/government/publications/diverted-profits-tax-yield-methodological-note/diverted-profits-tax-yield-methodological-note

[6]https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/384071/AS2014_policy_costings_final.pdf

years to investigate to determine whether it is reasonable to issue a DPT preliminary notice.

In 2017/18 HMRC issued 200 DPT preliminary notices to 28 businesses and 190 DPT charging notices to 22 businesses[7].

Differences between the numbers of DPT preliminary and charging notices can be due to timing differences, for example where a preliminary notice is issued at year end, or as a result of successful representations made to HMRC on the specified issues.

The DPT legislation provides a 12 month review period after the notice is issued during which HMRC will continue to work with businesses to resolve the dispute. If, during the review period, HMRC is satisfied that the amount of DPT charged is excessive or insufficient, it can issue amending notices to reduce, or a supplementary notice to increase, the DPT charged. Businesses have the right of appeal against a DPT charge after the conclusion of the 12 month review period.

The DPT procedures are subject to a strict governance process, and all decisions to issue DPT notices are considered and agreed by a senior governance board.

[7] Multiple entities within the same group may be part of the arrangements, which can mean that multiple DPT notices are required in relation to a single arrangement