



Mutual Agreement Procedure (MAP) Advance Pricing Arrangement (APA)

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Mutual Agreement

1. What is a mutual agreement ?

It is a procedure that allows to rectify an incorrect application of the international tax treaties for the avoidance of double taxation.

This procedure is accessible for all taxpayers, individuals, companies, the self-employed and liberal professions or non-profit organisations.

The mutual agreement procedure can be initiated in case of following double taxation:

- a juridical double taxation, i.e. when the same taxpayer is taxed both in Belgium and in another State on the same income;

Example:

As a resident of Belgium, I work in Germany. My remunerations are taxed in Belgium, my State of residence, and in Germany, which is the State where I carry out a gainful activity.

- an economic double taxation, i.e. when the same income is taxed both in Belgium, in the name of a taxpayer, and in another State, in the name of another taxpayer linked with the first taxpayer.

Example:

A Belgian enterprise, subsidiary of a British enterprise, invoices the provision of services to its parent company. The invoiced amounts are considered as insufficient by the Belgian administration. The profits made by the Belgian enterprise are increased by the value of the abnormal advantage granted to the British parent company.

The mutual agreement procedure is regulated by a special provision foreseen in each double taxation agreement concluded by Belgium (mostly article 25).

Article 6 of the Treaty N° 90/436/EEC for the avoidance of double taxation in connection with the adjustment of profits of associated enterprises (hereafter “Arbitration Convention”) contains equally a mutual agreement procedure. This procedure is only for enterprises that are established in a Member State of the European Union.



2. What is not a mutual agreement ?

- The goal of a mutual agreement procedure is to rectify an incorrect application of international double taxation treaties. A complaint that has nothing to do with the application of such treaty cannot be the subject of a mutual agreement procedure. For such complaints it is appropriate to rely on the normally used remedies (objection, exemption ex officio and/or judicial appeal).
- The mutual agreement procedure is not intended to obtain a repayment plan of the tax that is due. A repayment plan is within the exclusive competence of the services responsible for the recovery of taxes.
- Nor does the mutual agreement procedure serve to negotiate or obtain a reduction of taxes.

3. How can I submit a request for a mutual agreement ?

A request for a mutual agreement procedure must always be made in writing (registered letter, regular post or electronic mail). If the request is submitted by a mandatory (other than a lawyer), it must be accompanied by a mandate.

You (= the applicant) must identify as precisely as possible: name, first name or designation, full address, national number or enterprise number. It is also appropriate to mention the concerned year(s).

Each request for mutual agreement must be sufficiently motivated.

According to the majority of the double taxation treaties concluded by Belgium, a mutual agreement procedure can be introduced when measures taken by Belgium and/or the other State result or will result in a taxation that is not in accordance with the provisions of the tax treaty. Therefore, it is important to describe in a detailed manner (if possible by means of documentary evidence) how the taken measures can lead to a taxation that is not in accordance with the tax treaty.

For some treaties, including the earliest of the conventions, it is moreover required that the measures taken by Belgium or another State result or will result in a double taxation contrary to the tax treaty. It concerns the treaties concluded by Belgium with Denmark, Germany, France, Grand Duchy of Luxemburg, Ireland, Israel, Malaysia and Portugal. In addition to a description of the reasons of the taxation contrary to the treaty, the proof of the double

taxation must also be delivered by a copy of the tax notice established in Belgium (notice of tax assessment) and in the other State.

Even when a request for a mutual agreement is based on article 6 of the Arbitration Convention, the requesting enterprise must be able to demonstrate that the violation of the arm's length principle results or will result in a double taxation.

4. To whom should I address my request for a mutual agreement?

In principle, a request for a mutual agreement must be submitted at the competent authority of the state of your residence, even when the disputed tax is established in the other State.

If you intend to solve a residence conflict¹ via the mutual agreement procedure, it is accepted that you submit the request at the competent authority of the State of which you assume to be a resident.

In the rare cases where the mutual agreement concerns the violation regarding non-discrimination provisions of a treaty, the request may be submitted in your State of nationality.

A request for a mutual agreement based on article 6 of the Arbitration Convention must be presented to the competent authority of the State of which the requesting enterprise is resident. If the request concerns a dispute on the division of profits between the head office and a permanent establishment or between permanent establishments, the request can also be presented to the competent authority of the State where the permanent establishment is located.

In Belgium, the request for a mutual agreement can only be sent to following address:

FPS Finance

Algemene Administratie van de Fiscaliteit (General Tax Administration)– Centrale Diensten
(Central Services)

Dienst Internationale Betrekkingen (International Relations)– Afdeling Commentaar
(Commentary Department)

North Galaxy – Tower A 24

Koning Albert II-laan 33 PO box 515

1030 BRUSSELS (Belgium)

aagfisc.com.internat@minfin.fed.be

¹ You are simultaneously considered as a resident of Belgium and as a resident of the other State



5. Within what time limit do I have to submit my request for a mutual agreement ?

As soon as possible.

A request for a mutual agreement can be submitted from the moment you consider that measures taken by Belgium or another State result or will result in a (double) taxation contrary to the treaty.

In order to consider your mutual agreement request as admissible, it must be presented within the specific time limit mentioned in each tax treaty (mostly article 25).

The double tax treaties concluded by Belgium with neighbouring countries provide e.g. following time limits:

- Germany: in principle two years, as from the notification or withholding at the source of the second taxation;
- France: within six months as from the date of notification or withholding at the source of the second taxation;
- Luxemburg: two years as from the notification or withholding at the source of the second taxation;
- Netherlands: within three years from the first notification of the action resulting in a taxation not in accordance with the provisions of the Convention.

It is irrelevant whether the second taxation (or the taxation contrary to the treaty) is established in Belgium or in the other State. When the assessment is established in Belgium, the time limit generally starts at the date of dispatch of the notice of assessment.

Each request for a mutual agreement based on article 6 of the Arbitration Convention must be presented at the latest within three years of the first notification of the action which results or is likely to result in double taxation. In Belgium the notification coincides with the dispatch of the tax notice. The starting point to determine the three-year time limit is the third working day following the date of dispatch of the notice of assessment (this date is also mentioned on the notice of assessment itself).

6. I submitted my request for a mutual agreement. Do I have to pay the established tax ?

In principle you have to pay the tax established in Belgium.



Often, a request for a mutual agreement is submitted in response to a double taxation in Belgium and in another State. Because of this double taxation you can face financial difficulties or a lack of financial means.

When submitting the request for a mutual agreement, you also have the possibility to ask to limit the amount of tax payable in Belgium to the amount that is immediately due. In many cases the amount that is immediately due (also known as “indisputably payable part”) will be reduced to zero. Consequently, and pending the outcome of the mutual agreement, the payment of tax is temporarily suspended.

However, if as a result of the mutual agreement, the Belgian tax is maintained, the interest for late payment will be added to the outstanding tax in accordance with the provisions of the current Belgian tax legislation.

For the sake of completeness, it should be noted that submitting a request for a mutual agreement in principle suspends the international assistance for the recovery of foreign tax when this tax is established in a Member State of the European Union.

7. In which language do I have to draw up my request for a mutual agreement ?

A request for a mutual agreement must be drawn up in one of the three official languages of Belgium, being German, French or Dutch.

However, additional documentation may be submitted in English. The language of the proceedings during the investigation of the request will be in one of the three official languages, as stipulated by the Belgian legislation on the use of languages in administrative matters.

8. At the end of the procedure for a mutual agreement, tax is refunded to me. Am I entitled to moratorium interests?

Yes. The refund of Belgian tax at the end of the procedure for a mutual agreement entitles you to a payment of moratorium interests, determined in accordance with the current Belgian legislation.



9. May I simultaneously submit an administrative appeal and a request for a mutual agreement procedure?

Yes. A procedure for a mutual agreement, as provided for in the international treaties, is entirely distinct from the appeal possibilities as provided for in the domestic law of the States.

In other words, you can simultaneously dispute a taxation (that you don't consider to be in accordance with the double tax treaty):

- according legal remedies provided by the domestic law of the State who is responsible for the contested tax assessment. If it concerns a Belgian tax assessment, you can find all information on your tax assessment notice under the category "what to do if I do not agree with the assessment?";
- by means of the mutual agreement procedure as provided by the international treaties, whatever State is at the basis of the disputed taxation. In principle you have to submit your request at the competent authority of your State of residence (cf. FAQ "to whom should I address my request for a mutual agreement ?").

Moreover, if you have to deal simultaneously with a taxation in Belgium and in another State, you have following possibilities to object:

- the Belgian taxation according legal remedies as provided by Belgian law (all information can be found on the assessment notice under the category "what to do if I do not agree with the assessment?");
- the foreign taxation according the legal remedies as provided by the national legislation of the concerned State;
 - both taxations by means of one request for a mutual agreement that has to be submitted at the competent authority of your State of residence (cf. FAQ "to whom should I address my request for a mutual agreement ?").

10. Previously, I submitted an appeal that was rejected. Can I still submit a request for a mutual agreement ?

Yes, provided that you are within the time limits to submit a request for a mutual agreement (cf. FAQ "Within what time limit do I have to submit my request for a mutual agreement ?").

A mutual agreement procedure as provided for in the international treaties is entirely distinct from the appeal possibilities as provided for in the domestic law of the States.



11. Previously, I submitted an appeal that was rejected. I filed a legal remedy against the decision to dismiss. Can I still submit a request for a mutual agreement ?

Yes, provided that you are within the time limits to submit a request for a mutual agreement (cf. FAQ “*Within what time limit do I have to submit my request for a mutual agreement ?*”).

A mutual agreement procedure as provided for in the international treaties is entirely distinct from the appeal possibilities as provided for in the domestic laws of the States.

12. I don't agree with the solution resulting from the conclusion of the mutual agreement procedure. Do I have the right to appeal against the proposed solution?

No. Within the context of a mutual agreement procedure, there is no single administrative or judicial authority who is competent to take a decision in the absence of an agreement with the proposed solution.

You are free to refuse the proposed solution and give priority to the continuation of the possibly initiates litigation proceedings in Belgium or in the other State.

13. How much will it cost me to submit this request for a mutual agreement ?

Except for the costs you incur, if you would require the assistance of a lawyer, the mutual agreement procedure is free of charge.

14. Other questions ?

You did not find an answer to your questions concerning the mutual agreement ?

Any additional information can be requested at following email address:

aagfisc.com.internat@minfin.fed.be

Advance Pricing Arrangement (APA)

1. What is an APA?

An APA or 'Advance Pricing Arrangement' is a prior agreement concerning transfer prices and can be obtained at the FPS Finance.

It is an agreement to determine, before those transactions take place, an appropriate range of criteria (for example, the method, comparable elements and their appropriate adjustments, critical assumptions regarding future events) in order to determine the transfer prices of these transactions during a certain period of time. A prior agreement concerning transfer prices can be unilateral between one tax administration and one taxpayer, or bilateral/multilateral between two or more tax administrations.

Following information concerns only bilateral and multilateral APA's.

2. How can I submit a bilateral or multilateral APA ?

A request for a bilateral or multilateral APA must always be submitted in writing (by registered letter, regular or electronic letter).

In order to allow the International Relations Service to investigate your request as quickly as possible, you must include following documentation:

- identity of the different parties and a description of the group
- duration of the APA
- description of the intercompany transactions
- transfer pricing method
- comparability study (if available)
- functional analysis
- unilateral rulings concluded by the group (if any)
- financial records of the concerned company

If your request is submitted by a mandatory (other than a lawyer) you need to include the mandate.

3. To whom should I address my request for a bi- or multilateral APA?

In principle, a request for a bilateral or multilateral APA may be submitted at the competent authorities of both States in which the (group)companies are resident. The competent authorities of the State in which the parent company is a resident will initiate the procedure.



If the parent company is situated in a third country, the competent authorities of both States will determine which competent authority will firstly initiate the procedure.

In Belgium, a request for a bilateral or multilateral APA can only be submitted at following address:

FPS Finance
General Administration of Taxes – Central services
Service International Relations – Division Commentary
North Galaxy – Tower A 24
Koning Albert II-laan 33 / mailbox 515
1030 BRUSSELS
aagfisc.com.internat@minfin.fed.be

4. Within what period do I have to submit my request for a bi- or multilateral APA ?

Basically, your request for a bilateral or multilateral APA has to be submitted before the envisaged transactions will take place. However, for practical reasons, the International Relations Service authorizes to initiate an APA on the first day of the accounting year, even if transactions already took place between the first day of the accounting year and the filing date of the request, provided the request is submitted not later than the last day of that accounting year.

Example:

You submit a request for a multilateral APA on 25/7/2016 in which you ask certainty for a period of 5 accounting years, namely from 1/1/2016 until 31/12/2020 including. Even though transactions have taken place between 1/1/2016 and the date of request (25/7/2016), the APA can be initiated from 1/1/2016.

However, if the request is submitted on 22/3/2017, the accounting year 2016 cannot be the subject any more of the prior agreement, because the request must be submitted not later than the last day of that accounting year (in this case 31/12/2016).

However, if relevant facts and circumstances are identical during previous tax years, you can ask for a roll-back, allowing to apply the outcome of the APA for the previous years. The International Relations service authorizes a roll-back, but only as long as the applicable time limits (such as assessment periods) still permit it. For Belgium this means basically that roll-back can only be applied if the relevant facts and circumstances in previous years are the same and the assessment terms for these years have not expired on the moment the APA is



closed with the foreign tax administration and the foreign tax administration agrees with this roll-back.

5. In which language do I have to draw up my request for a bi- or multilateral APA ?

In principle, your request for a bilateral or multilateral APA must be drawn up in one of the three official languages of Belgium, namely German, French and Dutch.

However, the above-mentioned attached documentation may be submitted in English.

6. How much will it cost me to submit this request for a bi- or multilateral APA ?

In Belgium, submitting a request for a bilateral or multilateral APA is free of charge. However, it may well be that the foreign administration with whom you want to conclude an APA requires a fee.

7. Other questions ?

You do not find an answer to your question concerning APA's?

Additional information can be obtained at following email address:

aagfisc.com.internat@minfin.fed.be.

Circular

On the 7th of March 2018, Circular 2018/C/27 regarding the rules on dispute resolution in respect of the application of international tax treaties was published.

This circular gives more information on the mutual agreement procedure as provided for in the double tax treaties concluded by Belgium with other countries.

This circular can be consulted at following website:

https://gcloudbelgium.sharepoint.com/sites/minfin-fisconet_public/fiscal-discipline/incometaxes/administrative-directives-and-comments/circular-letters/undefined/sites/minfinfisconet_public/fiscal-discipline/income-taxes/administrative-directives-andcomments/circular-letters/circular-letters-procedure/9a511b78-6594-4df5-92ece35d8b488b5f.