

Germany Dispute Resolution Profile

(Last updated: 10 September 2019)

General Information

- **German tax treaties are available at:**

[http://www.bundesfinanzministerium.de/Web/DE/Themen/Steuern/Internationales Steuerrecht/Staatenbezogene Informationen/staatenbezogene_info.html](http://www.bundesfinanzministerium.de/Web/DE/Themen/Steuern/Internationales_Steuerrecht/Staatenbezogene_Informationen/staatenbezogene_info.html)

- **MAP request should be made to:**

For all MAPs concerning specific taxpayers and for all APAs:

Bundeszentralamt für Steuern // Federal Central Tax Office
Referate St III 1 / St III 2 // Divisions St III 1 / St III 2 –
An der Kuppe 1
53225 Bonn
Germany

Tel.: +49-228-406-0 (central operator, please ask to be connected to Ms Meike Halfter (St III 1), Mr Karsten Flüchter (St III 2), or one of their deputies)

Fax.: +49-228-406-3118 | Email: vv_sv@bzst.bund.de

With respect to mutual agreements of a general nature, which concern or may concern a category of taxpayers, the Federal Ministry of Finance in Berlin is the Competent Authority. The Federal Central Tax Office (see above) can provide information on who to contact.

- **APA request should be made to:**

See above (same as for MAPs concerning specific taxpayers)

| s/n | | Response | Detailed explanation | Where publicly available information and guidance can be found |
|-------------------------------|---|----------|--|--|
| A. Preventing Disputes | | | | |
| 1. | Are agreements reached by your competent authority to resolve difficulties or doubts arising as to the interpretation or application of your tax treaties in relation to issues of a general nature which concern, or which may concern, a category of taxpayers published? | Yes | General mutual agreements are published as Federal Ministry of Finance circulars in the Bundessteuerblatt (BStBl, Federal Tax Gazette), in the same way as other circulars in which the Federal Ministry of Finance publishes its understanding of German tax law. | <p>An overview of Federal Ministry of Finance circulars in force in March 2019 was published in a circular of 18 March 2019 (BStBl I 2019, 270) and is also available online at</p> <p>https://www.bundesfinanzministerium.de/Content/DE/Downloads/BMF_Schreiben/Weitere_Steuerthemen/Normenflut/2019-03-18-anwendung-bmf-schreiben-gleich-lautende-erlasse-bis-15-03-2019.html</p> <p>Most recent circulars relating to specific bilateral treaties are also available, indexed by treaty, at http://www.bundesfinanzministerium.de/Web/DE/Themen/Steuern/Internationales_Steuerrecht/Staatenbezogene_Informationen/staatenbezogene_info.html</p> <p>General guidance by circulars on international tax matters can be found at: http://www.bundesfinanzministerium.de/Web/DE/Themen/Steuern/Internationales_Steuerrecht/Allgemeine_Informationen/allgemeine_informationen.html</p> |
| 2. | Are bilateral APA programmes implemented? If yes: | Yes | | Federal Ministry of Finance circular of 5 October 2006 on APA procedures (BStBl I 2006, 594), available online at https://www.bzst.de/SharedDocs/BMF/DE/Downloads/bmf_Schreiben_20061005_apa.pdf . |

| s/n | | Response | Detailed explanation | Where publicly available information and guidance can be found |
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| | | | | A non-binding English translation is available at https://www.oecd.org/ctp/dispute/47655669.pdf . |
| a. | <ul style="list-style-type: none"> Are roll-back of APAs provided for in the bilateral APA programmes? | Yes | See point 7.3 of the circular of 5 October 2006 (referenced above). | See above. |
| b. | <ul style="list-style-type: none"> Are there specific timeline for the filing of an APA request? | Yes | See point 3.8 of the circular of 5 October 2006 (referenced above). | See above. |
| c. | <ul style="list-style-type: none"> Are rules, guidelines and procedures on how taxpayers can access and use bilateral APAs, including the specific information and documentation that should be submitted in a taxpayer's request for bilateral APA assistance, publicly available? | Yes | See the circular of 5 October 2006 (referenced above). On information and documentation that should be submitted, see points 3.5 and 3.6 of the circular. | See above. |
| d. | <ul style="list-style-type: none"> Are there any fees charged to taxpayers for a bilateral APA request? | Yes | Basic summary: Generally: EUR 20 000 (15 000 for prolongation / 10000 for amendment); Smaller transactions: EUR 10 000 (7500/5000); | § 178a of the Abgabenordnung (Fiscal Code) can be found at http://www.gesetze-im-internet.de/ao_1977/_178a.html An English working translation is available at http://www.gesetze-im-internet.de/englisch_ao/index.html |

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| | | | <p>No fees in case of hardship and specific interest of tax administration in the APA</p> <p>For details see § 178a of the Abgabenordnung (Fiscal Code).</p> | |
| e. | <ul style="list-style-type: none"> Are statistics relating to bilateral APAs publicly available? | Yes | Germany contributes to the APA statistics published by the EU Joint Transfer Pricing Forum. | <p>For the last available statistics see https://ec.europa.eu/taxation_customs/news/statistics-apas-and-maps-eu_en</p> |
| 3. | Is training provided to your officials involved in the auditing /examination of taxpayers to ensure that any assessments made by them are in accordance with the provisions of your tax treaties? | Yes | Auditors involved in auditing international transactions generally receive special training, in particular several training courses at the Bundesfinanzakademie (Federal Finance Academy) on international taxation and transfer pricing. | Currently not explicitly mentioned in public guidance. |
| 4. | Is other information available on preventing tax treaty-related disputes? | See detailed explanation | There is a detailed circular on simultaneous and joint audits. | <p>See the Federal Ministry of Finance circular of 6 January 2017 on coordinated external tax audits (BStBl I 2017, 89), available online at https://www.bundesfinanzministerium.de/Content/DE/Downloads/BMF_Schreiben/Internationales_Steuerecht/Allgemeine_Informationen/2017-01-06-Merkblatt-ueber-koordinierte-steuerliche-Aussenpruefungen-mit-Steuerverwaltungen-anderer-Staaten-und-Gebiete.pdf</p> |

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| | | | | <p>A non-binding English translation is available at https://www.bundesfinanzministerium.de/Content/DE/Downloads/BMF_Schreiben/Internationales_Steuerecht/Allgemeine_Informationen/2017-01-06-Merkblatt-ueber-koordinierte-steuerliche-Aussenpruefungen-mit-Steuerverwaltungen-anderer-Staaten-und-Gebiete-englische-Version.pdf</p> |

Notes:

1. An APA is an “arrangement that determines, in advance of controlled transactions, an appropriate set of criteria (e.g. method, comparables and appropriate adjustments thereto, critical assumptions as to future events) for the determination of the transfer pricing for those transactions over a fixed period of time”. (see definition of APA in the *OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations* (“Transfer Pricing Guidelines”).)

2. Situations may arise in which the issues resolved through an APA are relevant with respect to previous filed tax years not included within the original scope of the APA. The concept of “roll-back” is further elaborated in paragraph 4.136 of Section F (Advance pricing arrangement) of Chapter IV of the Transfer Pricing Guidelines and in paragraph 69 of Section D.4.2 (Possible retrospective application (“Roll back”)) of the Annex to Chapter IV (Guidelines for Conducting Advance Pricing Arrangements under the Mutual Agreement Procedure (“MAP APAs”)) of the Transfer Pricing Guidelines. Simply put, the “roll-back” of the APA is understood to mean that the outcome of the APA is applied to previous filed tax years not included within the original scope of the APA.

Germany Dispute Resolution Profile – Availability and Access to MAP

| s/n | | Response | Detailed explanation | Where publicly available information and guidance can be found |
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| B. Availability and Access to MAP | | | | |
| 5. | Are transfer pricing cases covered within the scope of MAP? | Yes | MAP is available for transfer pricing cases, provided the general requirements of the applicable treaty article on MAP are met. | <p>Cases of non-arm's length transfer pricing are specifically mentioned as an example for cases with taxation not in accordance with a convention in point 2.3.2 of the German Federal Ministry of Finance circular on MAPs. See the Federal Ministry of Finance circular of 9 October 2018 on MAPs (BStBl I 2018, 1122), available online at https://www.bundesfinanzministerium.de/Content/DE/Downloads/BMF_Schreiben/Internationales_Steuerecht/Allgemeine_Informationen/2018-10-09-Verstaendigungsverfahren-Schiedsverfahren-Merkblatt.html</p> <p>A non-binding English translation is available at https://www.bundesfinanzministerium.de/Content/EN/Downloads/Guidance-note-on-international-mutual-agreement-and-arbitration-procedures-in-the-field-of-taxes-on-income-and-capital.pdf.</p> |
| 6. | Are issues relating to the application of treaty anti-abuse provision covered within the scope of MAP? | Yes | MAP is available for issues relating to the application of treaty anti-abuse provisions, provided the general requirements of the applicable treaty article on MAP are met. | Currently not explicitly mentioned in public guidance. |

Germany Dispute Resolution Profile – Availability and Access to MAP

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| 7. | Are issues relating to the application of domestic anti-abuse provision covered within the scope of MAP? | Yes | MAP is available for issues relating to the application of domestic anti-abuse provisions, provided the general requirements of the applicable treaty article on MAP are met. Note that the German “Basis for negotiation for agreements for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital” of 2013 contains an article (Article 28) according to which the treaty shall not be interpreted as to prevent a Contracting State from applying its domestic legal provisions on the prevention of tax evasion or tax avoidance. | Currently not explicitly mentioned in public guidance. |
| 8. | Are issues where there is already an audit settlement between the tax authority and the taxpayer covered within the scope of MAP? | Yes | MAP is available for issues where there is already an audit settlement, provided the general requirements of the applicable treaty article on MAP are met. Note that under German law there is a possibility for taxpayers to waive the right to domestic appeals and also the right to request MAP. Where such an | See point 5 of the German Federal Ministry of Finance circular on MAPs of 9 October 2018 on MAPs (BStBl I 2018, 1122), available online at https://www.bundesfinanzministerium.de/Content/DE/Downloads/BMF_Schreiben/Internationales_Steuerverrecht/Allgemeine_Informationen/2018-10-09-Verstaendigungsverfahren-Schiedsverfahren-Merkblatt.html |

Germany Dispute Resolution Profile – Availability and Access to MAP

| s/n | | Response | Detailed explanation | Where publicly available information and guidance can be found |
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| | | | <p>explicit waiver was declared by all taxpayers involved in the case, access to MAP will not be granted. Previous German guidance suggested that waiving the right to request MAP could be appropriate in certain situations. The now revised guidance, since April 2017, no longer suggests waiving the right to request MAP. It does however suggest that it is appropriate to conclude so-called “agreements on facts” (in German: “tatsächliche Verständigung” between a taxpayer and a German local tax office only in connection with a waiver of the right to request arbitration in relation to the contents of the “agreement on facts”. See the new guidance referenced in the right column.</p> | <p>(Point 5 of the 2018 circular linked above is identical with the version first introduced by Federal Ministry of Finance circular of 5 April 2017, BStBl I 2017, 707)</p> <p>A non-binding English translation is available at https://www.bundesfinanzministerium.de/Content/EN/Downloads/Guidance-note-on-international-mutual-agreement-and-arbitration-procedures-in-the-field-of-taxes-on-income-and-capital.pdf.</p> |
| 9. | Are double taxation cases resulting from bona fide taxpayer initiated foreign adjustments covered within the scope of MAP? | Yes | MAP is available for double taxation cases resulting from bona fide taxpayer initiated foreign adjustments, provided the general requirements of the | Currently not explicitly mentioned in public guidance. |

Germany Dispute Resolution Profile – Availability and Access to MAP

| s/n | | Response | Detailed explanation | Where publicly available information and guidance can be found |
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| | | | applicable treaty article on MAP are met. | |
| 10. | Are there any other treaty related issues not covered under s/n 5 to 9 which are not within the scope of MAP? | See de-tailed explanation | <p>MAP is available provided the requirements of the applicable treaty article on MAP are met. Note that under some older treaties still in force (or still in force for past tax years), MAP access is limited to cases of actual double taxation and may be subject to discretion.</p> <p>On the relationship to procedures for the refund or reduction of withholding taxes, see points 2.1.6 and 2.1.7 of the circular referenced in the right column.</p> <p>Further note that under the EU Arbitration Convention, access to MAP can be denied in cases involving serious penalties (see Article 8 of the EU Arbitration Convention). How to deal with cases involving serious penalties under bilateral treaties is currently under review.</p> | <p>Treaties are available at http://www.bundesfinanzministerium.de/Web/DE/Themen/Steuern/Internationales_Ssteuerrecht/Staatenbezogene_Informationen/staatenbezogene_info.html.</p> <p>Points 2.1.6 and 2.1.7 of the Federal Ministry of Finance circular on MAP of 9 October 2018 (BStBl I 2018, 1122), available online at https://www.bundesfinanzministerium.de/Content/DE/Downloads/BMF_Schreiben/Internationales_Ssteuerrecht/Allgemeine_Informationen/2018-10-09-Verstaendigungsverfahren-Schiedsverfahren-Merkblatt.html</p> <p>A non-binding English translation is available at https://www.bundesfinanzministerium.de/Content/EN/Downloads/Guidance-note-on-international-mutual-agreement-and-arbitration-procedures-in-the-field-of-taxes-on-income-and-capital.pdf.</p> <p>The EU Arbitration Convention is available at http://ec.europa.eu/taxation_customs/business/company-tax/transfer-pricing-eu-context/transfer-pricing-arbitration-convention_en</p> |

| s/n | | Response | Detailed explanation | Where publicly available information and guidance can be found |
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| 11. | Are taxpayers allowed to request MAP assistance in cases where the taxpayer has sought to resolve the issue under dispute via the judicial and administrative remedies provided by the domestic law of your jurisdiction? | Yes | See point 2.1.5 of the guidance referenced in the right column. | <p>See point 2.1.5 of the German Federal Ministry of Finance circular on MAP of 9 October 2018 (BStBl I 2018, 1122), available online at https://www.bundesfinanzministerium.de/Content/DE/Downloads/BMF_Schreiben/Internationales_Steuerecht/Allgemeine_Informationen/2018-10-09-Verstaendigungsverfahren-Schiedsverfahren-Merkblatt.html</p> <p>A non-binding English translation is available at https://www.bundesfinanzministerium.de/Content/EN/Downloads/Guidance-note-on-international-mutual-agreement-and-arbitration-procedures-in-the-field-of-taxes-on-income-and-capital.pdf.</p> |
| 12. | Are taxpayers allowed to request for MAP assistance in cases where the issue under dispute has already been decided via the judicial and administrative remedies provided by the domestic law of your jurisdiction? | Yes | See point 2.1.5 (concerning access) and point 13.1.4 (concerning the possibility to deviate from a judgement) of the guidance referenced in the right column. | <p>See points 2.1.5 and 13.1.4 of the German Federal Ministry of Finance circular on MAP of 9 October 2018 (BStBl I 2018, 1122), available online at https://www.bundesfinanzministerium.de/Content/DE/Downloads/BMF_Schreiben/Internationales_Steuerecht/Allgemeine_Informationen/2018-10-09-Verstaendigungsverfahren-Schiedsverfahren-Merkblatt.html</p> <p>A non-binding English translation is available at https://www.bundesfinanzministerium.de/Content/EN/Downloads/Guidance-note-on-international-mutual-agreement-and-arbitration-procedures-in-the-field-of-taxes-on-income-and-capital.pdf.</p> |

| s/n | | Response | Detailed explanation | Where publicly available information and guidance can be found |
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| 13. | Are rules, guidelines and procedures on how taxpayers can access and use MAP, including the specific information and documentation that should be submitted in a taxpayer's request for MAP assistance, publicly available? | Yes | See guidance referenced in the right column. On information and documentation that should be submitted, see points 2.3.3 and 11.3.2 through 11.3.4 of the circular. | <p>Federal Ministry of Finance circular on MAP of 9 October 2018 (BStBl I 2018, 1122), available online at https://www.bundesfinanzministerium.de/Content/DE/Downloads/BMF_Schreiben/Internationales_Steuerecht/Allgemeine_Informationen/2018-10-09-Verstaendigungsverfahren-Schiedsverfahren-Merkblatt.html</p> <p>A non-binding English translation is available at https://www.bundesfinanzministerium.de/Content/EN/Downloads/Guidance-note-on-international-mutual-agreement-and-arbitration-procedures-in-the-field-of-taxes-on-income-and-capital.pdf.</p> <p>Additional guidance (as mentioned in point 11.3.4 of the above referenced circular) available at https://www.bzst.de/SharedDocs/Downloads/DE/Merkblaetter/Merkblatt_Uebersicht_erforderliche_Angaben_Verstaendigungsverfahren.pdf</p> |
| 14. | Are there specific timeline for the filing of a MAP request? | Yes | Almost all treaties contain specific time limits for MAP requests. Most follow Article 25 paragraph 1, second sentence, of the OECD Model Tax Convention, but some do not. For the very small number of older treaties still in force (or still in force for past tax years) that do not include a specific time | <p>See points 2.2.1 through 2.2.4 of the German Federal Ministry of Finance circular on MAP of 9 October 2018 (BStBl I 2018, 1122), available online at https://www.bundesfinanzministerium.de/Content/DE/Downloads/BMF_Schreiben/Internationales_Steuerecht/Allgemeine_Informationen/2018-10-09-Verstaendigungsverfahren-Schiedsverfahren-Merkblatt.html</p> |

Germany Dispute Resolution Profile – Availability and Access to MAP

| s/n | | Response | Detailed explanation | Where publicly available information and guidance can be found |
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| | | | limit, see point 2.2.3 of the guidance referenced in the right column. | A non-binding English translation is available at https://www.bundesfinanzministerium.de/Content/EN/Downloads/Guidance-note-on-international-mutual-agreement-and-arbitration-procedures-in-the-field-of-taxes-on-income-and-capital.pdf . |
| 15. | Are guidance on multilateral MAPs publicly available? | See de-tailed explanation | Currently only limited guidance is available, but the possibility of multilateral MAPs is acknowledged: The guidance on APAs mentions multilateral APAs in its title; and the German government endorsed the 2009 Revised Code of Conduct for the Effective Implementation of the EU Arbitration Convention which includes guidance on MAPs in multilateral cases in its point 6.2. | Federal Ministry of Finance circular of 5 October 2006 on APA procedures (BStBl I 2006, 594), available online at https://www.bzst.de/SharedDocs/BMF/DE/Downloads/bmf_Schreiben_20061005_apa.pdf . A non-binding English translation is available at https://www.oecd.org/ctp/dispute/47655669.pdf . The 2009 Revised Code of Conduct for the Effective Implementation of the EU Arbitration Convention is available at http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2009:322:0001:0010:EN:PDF |
| 16. | Are tax collection procedures suspended during the period a MAP case is pending? | See de-tailed explanation | A MAP request does not automatically trigger a suspension of collection, but in most cases suspension of collection is possible at separate request (to be filed at the relevant local tax office) under general domestic law rules, in particular § 361 and § | § 361 and § 222 of the Abgabenordnung (Fiscal Code) can be found at http://www.gesetze-im-internet.de/ao_1977/_361.html and http://www.gesetze-im-internet.de/ao_1977/_222.html An English working translation is available at http://www.gesetze-im-internet.de/englisch_ao/index.html |

Germany Dispute Resolution Profile – Availability and Access to MAP

| s/n | | Response | Detailed explanation | Where publicly available information and guidance can be found |
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| | | | 222 of the Abgabenordnung (Fiscal Code). | |
| 17. | Are there any fees charged to taxpayers for a MAP request? | No | There are however fees for bilateral/multilateral APAs, see above at 2. d) | - |
| 18. | Is there any other information available on availability and access to MAP? | Yes | For general guidance on MAP see the whole Federal Ministry of Finance circular on MAP of 9 October 2018 (which replaced the previous circular of 13 July 2006). Additionally, for MAPs under the EU Arbitration Convention, see the 2009 Revised Code of Conduct for the Effective Implementation of the EU Arbitration Convention. | <p>Federal Ministry of Finance circular on MAP of 9 October 2018 (BStBl I 2018, 1122), available online at https://www.bundesfinanzministerium.de/Content/DE/Downloads/BMF_Schreiben/Internationales_Steuerecht/Allgemeine_Informationen/2018-10-09-Verstaendigungsverfahren-Schiedsverfahren-Merkblatt.html</p> <p>A non-binding English translation is available at https://www.bundesfinanzministerium.de/Content/EN/Downloads/Guidance-note-on-international-mutual-agreement-and-arbitration-procedures-in-the-field-of-taxes-on-income-and-capital.pdf.</p> <p>The 2009 Revised Code of Conduct for the Effective Implementation of the EU Arbitration Convention is available at http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2009:322:0001:0010:EN:PDF</p> <p>In 2015 the EU Joint Transfer Pricing Forum published a Report which includes a newly revised Code of Conduct which has however not yet been</p> |

Germany Dispute Resolution Profile – Availability and Access to MAP

| s/n | | Response | Detailed explanation | Where publicly available information and guidance can be found |
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| | | | | adopted by the EU Council and the government representatives of the member states meeting within the council. This report is available at http://ec.europa.eu/taxation_customs/sites/taxation/files/resources/documents/taxation/company_tax/transfer_pricing/forum/final_report_ac_itpf_002_2015_en_final_clean.pdf |

| s/n | | Response | Detailed explanation | Where publicly available information and guidance can be found |
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| C. Resolution of MAP Cases | | | | |
| 19. | Are there any model timeframes for the steps taken by your competent authority from the receipt of a MAP case to the resolution of the case provided to taxpayers? | Yes | The Federal Ministry of Finance circular on MAP of 9 October 2018 (like the predecessor circular of 13 July 2006 contains model timeframes for certain steps for MAPs under the EU Arbitration Convention, starting in point 11.4 of the circular. Corresponding timeframes can also be found in the 2009 Revised Code of Conduct for the Effective Implementation of the EU Arbitration Convention. | <p>Federal Ministry of Finance circular on MAP of 9 October 2018 (BStBl I 2018, 1122), available online at https://www.bundesfinanzministerium.de/Content/DE/Downloads/BMF_Schreiben/Internationales_Steuerecht/Allgemeine_Informationen/2018-10-09-Verstaendigungsverfahren-Schiedsverfahren-Merkblatt.html</p> <p>A non-binding English translation is available at https://www.bundesfinanzministerium.de/Content/EN/Downloads/Guidance-note-on-international-mutual-agreement-and-arbitration-procedures-in-the-field-of-taxes-on-income-and-capital.pdf.</p> <p>The 2009 Revised Code of Conduct for the Effective Implementation of the EU Arbitration Convention is available at http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2009:322:0001:0010:EN:PDF</p> |
| 20. | Are statistics relating to the time taken to resolve MAP cases publicly available? | Yes | Statistics for Germany are available on the OECD MAP Statistics website. | OECD Mutual Agreement Procedure Statistics in general: http://www.oecd.org/tax/dispute/mutual-agreement-procedure-statistics.htm |
| 21. | Is interest or penalties resulting from adjustments made pursuant to a MAP | See de-tailed explanation | Where the result of a MAP is an agreement according to which a previous German adjustment is | Currently not explicitly mentioned in public guidance. |

Germany Dispute Resolution Profile – Resolution of MAP Cases

| s/n | | Response | Detailed explanation | Where publicly available information and guidance can be found |
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| | agreement waived or dealt with as part of the MAP procedure? | | repealed or reduced, corresponding interest claims will likewise be repealed or reduced (this is an automatic consequence under domestic law). There is currently no public guidance on whether and to what extent interest or penalties can be dealt with as part of the MAP. | |
| 22. | Are the roles and responsibility of the MAP office publicly available, for example, is the mission statement of the MAP office available in the <i>annual</i> report of the organisation? | Yes | See the guidance referenced in the right column. | <p>See point 1.4 of the German Federal Ministry of Finance circular on MAP of 9 October 2018 (BStBl I 2018, 1122), available online at https://www.bundesfinanzministerium.de/Content/DE/Downloads/BMF_Schreiben/Internationales_Steuerecht/Allgemeine_Informationen/2018-10-09-Verstaendigungsverfahren-Schiedsverfahren-Merkblatt.html</p> <p>A non-binding English translation is available at https://www.bundesfinanzministerium.de/Content/EN/Downloads/Guidance-note-on-international-mutual-agreement-and-arbitration-procedures-in-the-field-of-taxes-on-income-and-capital.pdf.</p> <p>The most recent circular on the responsibilities of the Federal Central Tax Office in the area of MAPs and arbitration, of 20 June 2011 (BStBl I 2011, 674), is available at</p> |

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| s/n | | Response | Detailed explanation | Where publicly available information and guidance can be found |
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| | | | | https://www.bzst.de/SharedDocs/BMF/DE/Downloads/bmf_Erlass_20110620.pdf . |
| 23. | <p>Is MAP arbitration a mechanism currently available for the resolution of tax treaty related disputes in any of your tax treaties?</p> <p>If not:</p> | Yes | <p>Arbitration clauses are currently in bilateral treaties in force with Armenia, Australia, Austria, Canada, France, Japan, Liechtenstein, Luxembourg, the Netherlands, Sweden, Switzerland, the United Kingdom, and the United States.</p> <p>Additionally, for transfer pricing cases between EU member states and for cases concerning the allocation of profits to a permanent establishment within the EU, generally the arbitration clauses of the EU Arbitration Convention apply.</p> | <p>Treaties are available at http://www.bundesfinanzministerium.de/Web/DE/Themen/Steuern/Internationales_Ssteuerrecht/Staatenbezogene_Informationen/staatenbezogene_info.html.</p> <p>The EU Arbitration Convention is available at http://ec.europa.eu/taxation_customs/business/company-tax/transfer-pricing-eu-context/transfer-pricing-arbitration-convention_en</p> |
| a. | <ul style="list-style-type: none"> Are there any legal limitations in your domestic law (for example in your constitution) to include MAP arbitration in your tax treaties? | | <p><i>[not applicable because response to 23 is "Yes"]</i></p> | - |
| b. | <ul style="list-style-type: none"> Does your treaty policy allow you to include MAP | | <p><i>[not applicable because response to 23 is "Yes"]</i></p> | - |

| s/n | | Response | Detailed explanation | Where publicly available information and guidance can be found |
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| | arbitration in your tax treaties? | | | |
| 24. | <p>Is the explanation of the relationship between the MAP and domestic law administrative and judicial remedies publicly available?</p> <p>If yes:</p> | Yes | <p>See point 2.1.5 (concerning access) and point 13.1.4 (concerning the possibility to deviate from a judgement) of the guidance referenced in the right column.</p> | <p>See points 2.1.5 and 13.1.4 of the German Federal Ministry of Finance circular on MAP of 9 October 2018 (BStBl I 2018, 1122), available online at https://www.bundesfinanzministerium.de/Content/DE/Downloads/BMF_Schreiben/Internationales_St_euerrecht/Allgemeine_Informationen/2018-10-09-Verstaendigungsverfahren-Schiedsverfahren-Merkblatt.html</p> <p>A non-binding English translation is available at https://www.bundesfinanzministerium.de/Content/EN/Downloads/Guidance-note-on-international-mutual-agreement-and-arbitration-procedures-in-the-field-of-taxes-on-income-and-capital.pdf.</p> |
| a. | <ul style="list-style-type: none"> Does the guidance specifically address whether the competent authority considers that it is legally bound to follow a domestic court decision in the MAP or will not deviate from a domestic court decision as a matter of administrative policy or practice? | Yes | <p>See point 13.1.4 of the guidance referenced in the right column.</p> <p>German law (§ 175a of the Abgabenordnung – Fiscal Code) provides for the authority to change binding tax assessments in order to implement the results of a MAP or arbitration procedure. This includes tax assessments resulting from a final court decision.</p> | <p>See above.</p> <p>Additionally, § 175a of the Abgabenordnung (Fiscal Code) can be found at http://www.gesetze-im-internet.de/ao_1977/_175a.html</p> <p>An English working translation is available at http://www.gesetze-im-internet.de/englisch_ao/index.html</p> |

Germany Dispute Resolution Profile – Resolution of MAP Cases

| s/n | | Response | Detailed explanation | Where publicly available information and guidance can be found |
|-----|--|---------------------------|---|---|
| 25. | Are taxpayers allowed to request for multi-year resolution through the MAP of recurring issues with respect to filed tax years? | Yes | Requests for multi-year resolution of recurring issues with respect to filed tax years are possible, provided the general requirements of the applicable treaty article on MAP are met. | Currently not explicitly mentioned in public guidance. |
| 26. | Do all your jurisdiction's tax treaties contain a provision which would oblige your jurisdiction to make corresponding adjustments or to grant access to the MAP with respect to the economic double taxation that may otherwise result from a primary transfer pricing adjustment (i.e. is paragraph 2 of Article 9 of the OECD Model Tax Convention or the UN Model Double Taxation Convention included in all of your jurisdiction's tax treaties)? | See de-tailed explanation | Most treaties contain a provision corresponding to Article 9 paragraph 2 of the OECD Model Tax Convention (as is Germany's treaty policy), but some older treaties do not. | Treaties are available at http://www.bundesfinanzministerium.de/Web/DE/Themen/Steuern/Internationales_Steuerrecht/Staatenbezogene_Informationen/staatenbezogene_info.html . |
| 27. | Is there any other information available on resolution of MAP cases? | | For general guidance on MAP see the whole Federal Ministry of Finance circular on MAP of 9 October 2018 (which replaced the | Federal Ministry of Finance circular on MAP of 9 October 2018 (BStBl I 2018, 1122), available online at https://www.bundesfinanzministerium.de/Content |

| s/n | | Response | Detailed explanation | Where publicly available information and guidance can be found |
|-----|--|----------|--|--|
| | | | <p>previous circular of 13 July 2006). Additionally, for MAPs under the EU Arbitration Convention, see the 2009 Revised Code of Conduct for the Effective Implementation of the EU Arbitration Convention.</p> | <p>/DE/Downloads/BMF_Schreiben/Internationales_Steuerecht/Allgemeine_Informationen/2018-10-09-Verstaendigungsverfahren-Schiedsverfahren-Merkblatt.html</p> <p>A non-binding English translation is available at https://www.bundesfinanzministerium.de/Content/EN/Downloads/Guidance-note-on-international-mutual-agreement-and-arbitration-procedures-in-the-field-of-taxes-on-income-and-capital.pdf.</p> <p>The 2009 Revised Code of Conduct for the Effective Implementation of the EU Arbitration Convention is available at http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2009:322:0001:0010:EN:PDF</p> <p>In 2015 the EU Joint Transfer Pricing Forum published a Report which includes a newly revised Code of Conduct which has however not yet been adopted by the EU Council and the government representatives of the member states meeting within the council. This report is available at http://ec.europa.eu/taxation_customs/sites/taxation/files/resources/documents/taxation/company_tax/transfer_pricing/forum/final_report_ac_jtpf_002_2015_en_final_clean.pdf</p> |

| s/n | | Response | Detailed explanation | Where publicly available information and guidance can be found |
|--|--|---------------------------|--|---|
| D. Implementation of MAP Agreements | | | | |
| 28. | Where the agreement reached by your competent authority through the MAP process leads to additional tax to be paid by your taxpayer, is there publicly available information on the timeframe the taxpayer could expect its tax position to be amended to reflect the agreement reached by the competent authority and/or for the additional tax to be paid? | See de-tailed explanation | <p>MAP agreements rarely lead to additional tax to be paid, generally they either reduce tax previously assessed or confirm tax previously assessed (or partly reduce and partly confirm). The agreement may however have the consequence that a suspension of collection that was previously granted ends. In most cases an agreement reached by the competent authorities will be subject to the taxpayer's acceptance.</p> <p>General domestic rules on payment deadlines after amended tax assessments and on the end of a suspension of collection apply.</p> | <p>Currently not explicitly mentioned in public guidance targeted at MAP situations.</p> <p>For the rules on suspension of collection, see above at 16.</p> |
| 29. | Where the agreement reached by your competent authority through the MAP process leads to a refund of the tax due or paid by your taxpayer, are there publicly available | See de-tailed explanation | In most cases an agreement reached by the competent authorities will be subject to the taxpayer's acceptance. Amended tax assessments will generally be issued shortly after receipt of | Currently not explicitly mentioned in public guidance targeted at MAP situations. |

| s/n | | Response | Detailed explanation | Where publicly available information and guidance can be found |
|-----|--|---------------------------|---|--|
| | information on the timeframe the taxpayer could expect its tax position to be amended to reflect the agreement reached by the competent authority and/or for a refund of the tax paid? | | such acceptance (and, in some cases, a corresponding acceptance of the taxpayer in the other jurisdiction). Any refunds, where applicable, are generally paid shortly after the issuance of the amended tax assessment. | |
| 30. | Are all mutual agreements reached through MAP implemented notwithstanding any time limits in your domestic law? | See de-tailed explanation | § 175a of the Abgabenordnung (Fiscal Code) allows the amendment of otherwise final and time-barred tax assessments in order to implement MAP results. There may be exceptional situations to which § 175a does not apply. | § 175a of the Abgabenordnung (Fiscal Code) can be found at http://www.gesetze-im-internet.de/ao_1977/_175a.html An English working translation is available at http://www.gesetze-im-internet.de/englisch_ao/index.html |
| 31. | Is there any other information available on the implementation of MAP agreements? | No | - | - |