

Poland Dispute Resolution Profile

(Last updated: 08 March 2019)

General Information

- Poland's tax treaties are available at:

<https://www.podatki.gov.pl/podatkowa-wspolpraca-miedzynarodowa/wykaz-umow-o-unikaniu-podwojnego-opodatkowania/>

- MAP request should be made to:

MINISTRY OF FINANCE
ul. Świętokrzyska 12
00-916 Warsaw
Poland

Contact details for MAPs under art. 25 par. 3 of DTC:

Ms Weronika Missala
Deputy Director of Tax System Department
tel.: + 48 22 694 44 38
e-mail: weronika.missala@mf.gov.pl

Mr Dominik Kaczmarek
Director of Tax System Department
tel.: +48 22 694 51 30
e-mail: dominik.kaczmarek@mf.gov.pl

Mr Filip Świtajła
Undersecretary of State
tel.: +48 22 694 47 76
e-mail: sekretariat.podsekretarzastanu9@mf.gov.pl

Contact details for transfer pricing MAP requests:

Mr Konrad Szpadzik
Deputy Director of Department for Large Business
National Revenue Administration
tel.: +48 22 694 48 87
fax: + 48 22 694 49 87
e-mail: konrad.szpadzik@mf.gov.pl

Contact details for “other” MAP requests:

Income Taxes Department
tel.: +48 22 694 33 26
fax: +48 22 694 33 31
e-mail: sekretariat.dd@mf.gov.pl

• **APA request should be made to:**

MINISTRY OF FINANCE
ul. Świętokrzyska 12
00-916 Warsaw
Poland

Contact details for APA requests:

Mr Konrad Szpadzik
Deputy Director of Department for Large Business
National Revenue Administration
tel.: +48 22 694 48 87
fax: + 48 22 694 49 87
e-mail: konrad.szpadzik@mf.gov.pl

Poland Dispute Resolution Profile – Preventing Disputes

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?	See detailed explanation	The agreements reached on the ground of art. 25 par. 3 of DTA are published on the Ministry of Finance's website.	https://www.podatki.gov.pl/podatkowa-wspolpraca-miedzynarodowa/wykaz-umow-o-unikaniu-podwojnego-opodatkowania/
2.	Are bilateral APA programmes implemented? If yes:	Yes	Since 2006	Act of 29 August 1997 – Tax Ordinance (Official Journal of 2015, no 613) – Unit IIa, articles 20a-20r.
a.	<ul style="list-style-type: none"> Are roll-back of APAs provided for in the bilateral APA programmes? 	No	APA may apply at the earliest from the date of filling the APA request.	Art. 20i § 1 of Tax Ordinance Act.
b.	<ul style="list-style-type: none"> Are there specific timelines for the filing of an APA request? 	Yes	<p>APA are possible only for transactions that are:</p> <ul style="list-style-type: none"> - not finished before the date of APA application, - not under tax audit of or under appeal procedure (either administrative or in administrative court). <p>In a case of renewal of APA application should be filed at least 6 months before the expiry date of APA.</p>	<p>Art. 20c of Tax Ordinance Act.</p> <p>Art. 20i § 5 of Tax Ordinance Act.</p>
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, 	Yes	Before filling the request there may be organised a preliminary meeting in order to give taxpayer all necessary information about the APA procedure, in particular, the expediency of making the arrangement, scope of necessary	https://www.podatki.gov.pl/ceny-transferowe/procedury-map-i-apa-statystyki/uprzednie-porozumienia-cenowe-apa/

Poland Dispute Resolution Profile – Preventing Disputes

s/n		Response	Detailed explanation	Where publicly available information and guidance can be found
	publicly available?		information, procedure and expected time of making the arrangement, as well as the expected conditions and validity thereof. The meeting is organised on the request of taxpayer. At this stage it is not necessary to provide details identifying the taxpayer.	
d.	<ul style="list-style-type: none"> Are there any fees charged to taxpayers for a bilateral APA request? 	Yes	<p>1 % of the value of transaction constituting the object of such arrangement and, moreover, in the case of:</p> <ul style="list-style-type: none"> - unilateral APA (domestic transactions) - no less than 5,000 PLN and no more than 50,000 PLN, - unilateral APA (foreign transitions) - no less than 20,000 PLN and no more than 100,000 PLN - a bilateral or multilateral APA – no less than 50,000 PLN and no more than 200,000 PLN. <p>In case of renewal of APA the fees is a half of a normal fee.</p>	<p>Art. 20m of Tax Ordinance Act. https://www.podatki.gov.pl/ceny-transferowe/procedury-map-i-apa-statystyki/upzednie-porozumienia-cenowe-apa/</p>
e.	<ul style="list-style-type: none"> Are statistics relating to bilateral APAs publicly available? 	Yes	Current statistics available on request or on website.	https://www.podatki.gov.pl/ceny-transferowe/procedury-map-i-apa-statystyki/upzednie-porozumienia-cenowe-apa/statystyki/

Poland Dispute Resolution Profile – Preventing Disputes

s/n		Response	Detailed explanation	Where publicly available information and guidance can be found
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	According to annual training program for fiscal administration approximately 5-15 training sessions are provided in area of tax treaties.	-
4.	Is other information available on preventing tax treaty-related disputes?	No	-	-

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.

Poland Dispute Resolution Profile – Availability and access to MAP

s/n		Response	Detailed explanation	Where publicly available information and guidance can be found
B. Availability and Access to MAP				
5.	Are transfer pricing cases covered within the scope of MAP?	Yes	CA shall accept each request for MAP in transfer pricing under DTA, which includes Art. 9 par. 2.	https://www.podatki.gov.pl/ceny-transferowe/procedury-map-i-apa-statystyki/procedura-wzajemnego-porozumiewania-sie-map/
6.	Are issues relating to the application of treaty anti-abuse provision covered within the scope of MAP?	Yes	-	-
7.	Are issues relating to the application of domestic anti-abuse provision covered within the scope of MAP?	Yes	New legislation entered into force on 15 July 2016.	Tax Ordinance Act – Unit IIIa (from 15 July 2016)
8.	Are issues where there is already an audit settlement between the tax authority and the taxpayer covered within the scope of MAP?	Yes	Generally there is no “audit settlement” according to the Polish tax law.	-
9.	Are double taxation cases resulting from bona fide taxpayer initiated foreign adjustments covered within the scope of MAP?	Yes	-	-
10.	Are there any other treaty related issues not covered under s/n 5 to 9 which are not within the scope of MAP?	No	-	-
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	-	-

Poland Dispute Resolution Profile – Availability and access to MAP

s/n		Response	Detailed explanation	Where publicly available information and guidance can be found
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	The final court ruling is binding for the Polish CA during the MAP.	-
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	-	https://www.podatki.gov.pl/podatkowa-wspolpraca-miedzynarodowa/procedura-wzajemnego-porozumiewania-sie-w-sprawach-indywidualnych-map/ https://www.podatki.gov.pl/ceny-transferowe/procedury-map-i-apa-statystyki/procedura-wzajemnego-porozumiewania-sie-map/
14.	Are there specific timeline for the filing of a MAP request?	Yes	<p>TP MAP: the three year period, which starts with the first of the following dates: date of delivery of tax audit report or date of delivery of tax decision.</p> <p>“Other” MAP: deadline is specified in the relevant treaty (generally 3 years from the first notification on the action resulting in taxation not in accordance with the treaty)</p>	https://www.podatki.gov.pl/podatkowa-wspolpraca-miedzynarodowa/procedura-wzajemnego-porozumiewania-sie-w-sprawach-indywidualnych-map/ https://www.podatki.gov.pl/ceny-transferowe/procedury-map-i-apa-statystyki/procedura-wzajemnego-porozumiewania-sie-map/
15.	Are guidance on multilateral MAPs publicly available?	No	-	-
16.	Are tax collection procedures suspended during the period a MAP case is pending?	Yes	Tax collection procedures are suspended as regards collection made on the ground of Council Directive 2010/24/EU	-

Poland Dispute Resolution Profile – Availability and access to MAP

s/n		Response	Detailed explanation	Where publicly available information and guidance can be found
			of 16 March 2010 concerning mutual assistance for the recovery of claims relating to taxes, duties and other measure unless there is a danger of fraud or insolvency	
17.	Are there any fees charged to taxpayers for a MAP request?	No	-	-
18.	Is there any other information available on availability and access to MAP?	No	-	-

Poland Dispute Resolution Profile – Resolution of MAP cases

s/n		Response	Detailed explanation	Where publicly available information and guidance can be found
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	TP MAPs are proceeded according to timeframes described in CoC to AC.	https://www.podatki.gov.pl/ceny-transferowe/procedury-map-i-apa-statystyki/procedura-wzajemnego-porozumiewania-sie-map/
20.	Are statistics relating to the time taken to resolve MAP cases publicly available?	Yes	-	TP MAPs: JTPF website TP and “other” MAPs: OECD website
21.	Is interest or penalties resulting from adjustments made pursuant to a MAP agreement waived or dealt with as part of the MAP procedure?	No	-	-
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?	No	-	-
23.	Is MAP arbitration a mechanism currently available for the resolution of tax treaty related disputes in any of your tax treaties? If not:	Yes	Some new treaties include arbitration provision. Poland does not propose to include MAP arbitration in the treaties. However, Poland include it if the second part of the treaty insists on it.	-
a.	• Are there any legal limitations in your domestic law (for example in your constitution) to include MAP arbitration in your tax treaties?	-	-	-
b.	• Does your treaty policy allow you to include MAP arbitration in your tax treaties?	-	-	-

Poland Dispute Resolution Profile – Resolution of MAP cases

s/n		Response	Detailed explanation	Where publicly available information and guidance can be found
24.	Is the explanation of the relationship between the MAP and domestic law administrative and judicial remedies publicly available? If yes:	Yes	-	-
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	-	https://www.podatki.gov.pl/podatkowa-wspolpraca-miedzynarodowa/procedura-wzajemnego-porozumiewania-sie-w-sprawach-indywidualnych-map/ https://www.podatki.gov.pl/ceny-transferowe/procedury-map-i-apa-statystyki/procedura-wzajemnego-porozumiewania-sie-map/
25.	Are taxpayers allowed to request for multi-year resolution through the MAP of recurring issues with respect to filed tax years?	Yes	-	https://www.podatki.gov.pl/ceny-transferowe/procedury-map-i-apa-statystyki/procedura-wzajemnego-porozumiewania-sie-map/
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)?	No	-	https://www.podatki.gov.pl/podatkowa-wspolpraca-miedzynarodowa/wykaz-umow-o-unikaniu-podwojnego-opodatkowania/

Poland Dispute Resolution Profile – Resolution of MAP cases

s/n		Response	Detailed explanation	Where publicly available information and guidance can be found
27.	Is there any other information available on resolution of MAP cases?	No	-	-

Poland Dispute Resolution Profile – Implementation of MAP Agreements

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?	Yes	Implementation of MAP agreement is made in accordance with general domestic tax provisions, covered by Tax Ordinance Act	-
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 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?	Yes	Implementation of MAP agreement, in the way of tax refund is made in accordance with general domestic tax provisions, covered by Tax Ordinance Act	-
30.	Are all mutual agreements reached through MAP implemented notwithstanding any time limits in your domestic law?	Yes	TP MAP: all cases under AC. “Other” MAP: majority of treaties include the provision that agreement shall be implemented notwithstanding the time limits in domestic law. If the treaty has no such provision, the limitation period shall be suspended while MAP is proceeded.	https://www.podatki.gov.pl/ceny-transferowe/procedury-map-i-apa-statystyki/procedura-wzajemnego-porozumiewania-sie-map/
31.	Is there any other information available on the implementation of MAP agreements?	No	-	-