

Portugal Dispute Resolution Profile

(Last updated: 06 April 2018)

General Information

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

http://info.portaldasfinancas.gov.pt/pt/informacao_fiscal/convencoes_evitar_dupla_tributacao/convencoes_tabelas_doelib/pages/english-version.aspx

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

Ministro das Finanças / Diretora Geral da Autoridade Tributária e Aduaneira
Direção de Serviços de Relações Internacionais (DSRI)
Address: Av. Eng. Duarte Pacheco, nº 28- 4º andar, 1099-013 Lisboa
Phone: (+351) 213834426 Fax: (+351) 213834414/ Email address: dsri@at.gov.pt

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

Diretora Geral da Autoridade Tributária e Aduaneira
Unidade dos Grandes Contribuintes
Address: Rua do Terreiro do Trigo n.º 1 - 1.º andar, 1149 - 060 Lisboa
Phone (+351) 218813700 Fax: (+351) 218813118/ Email address: ugc@at.gov.pt

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	<p>It is foreseen the publication of the agreements that concern a category of taxpayers. However, until now the Portuguese Tax Authority never concluded such an agreement. All agreements reached until the present concerned specific situations involving specific taxpayers.</p> <p>If the Portuguese Tax Authority concludes such agreements they will be published, in accordance with existing guidance.</p>	-
2.	<p>Are bilateral APA programmes implemented?</p> <p>If yes:</p>	Yes	<p>The Budget Law for 2008 introduced APA rules by adding Article 128-A to the Corporate Income Tax Code (CIRC). This Article was subsequently amended by the Decree-Law 159/2009 which renumbered it as Article 138 of the CIRC.</p> <p>Article 138, paragraph 9, of the CIRC provides that a Ministerial Order from the Minister of Finance shall regulate the requirements and conditions for filing a request for an APA, as well as the procedures, information and documentation related to the conclusion of APAs.</p> <p>In accordance with paragraph 9 of Article 138 of the CIRC, detailed APA regulations were introduced by Ministerial Order 620-A/2008.</p>	<p>http://info.portaldasfinancas.gov.pt/pt/informacao_fiscal/codigos_tributarios/CIRC_2R/Pages/irc138.aspx</p> <p>x</p>
a.	<ul style="list-style-type: none"> Are roll-back of APAs provided for in the bilateral APA programmes? 	No	According to Article 138 of the CIRC and the Ministerial Order 620-A/2008, APA's only apply to taxable years beginning after the request for an APA	<p>http://info.portaldasfinancas.gov.pt/pt/informacao_fiscal/legislacao/diplomas_legislativos/Documents/P</p>

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			has been presented.	ortaria_620-A-2008.pdf
b.	<ul style="list-style-type: none"> Are there specific timeline for the filing of an APA request? 	Yes	The APA request should be sent to the Portuguese Tax Authority up to 180 days prior to the beginning of the first taxable year covered by the Agreement (Ministerial Order 620-A).	http://info.portaldasfinancas.gov.pt/pt/informacao_fiscal/legislacao/diplomas_legislativos/Documents/Portaria_620-A-2008.pdf
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	Article 138 of CIRC and Ministerial Order 620-A/2008 establish detailed rules and procedures, which are publicly available.	http://info.portaldasfinancas.gov.pt/pt/informacao_fiscal/legislacao/diplomas_legislativos/Documents/Portaria_620-A-2008.pdf
d.	<ul style="list-style-type: none"> Are there any fees charged to taxpayers for a bilateral APA request? 	Yes	According to the Ministerial Order 620-A/2008, the conclusion of an APA is subject to the payment of fees, which are determined under the terms and limits established by the Ministerial Order 923/99, of 20 October 1999.	http://info.portaldasfinancas.gov.pt/pt/informacao_fiscal/legislacao/diplomas_legislativos/Documents/portaria_923-99_de_20_de_outubro.pdf
e.	<ul style="list-style-type: none"> Are statistics relating to bilateral APAs publicly available? 	Yes	Statistics on bilateral APAs have been sent to the EU Joint Transfer Pricing Forum and have been made publicly available.	https://ec.europa.eu/taxation_customs/sites/taxation/files/jtjtpf0152016enapa.pdf
3.	Is training provided to your officials involved in the auditing /examination of taxpayers to ensure that any assessments made by them are in	Yes	Training courses on the application of the tax treaties concluded by Portugal are frequently included in the Annual Training Plan.	-

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	accordance with the provisions of your 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.

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B. Availability and Access to MAP				
5.	Are transfer pricing cases covered within the scope of MAP?	Yes	Articles 17 to 20 of the Ministerial Order 1446-C/2001.	http://info.portaldasfinancas.gov.pt/pt/informacao_fiscal/legislacao/diplomas_legislativos/Documents/portaria_1446-c-2001_de_21_de_dezembro_i_serie_b.pdf
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	Where there is a disagreement between the taxpayer and the Portuguese Tax Authority as to whether the application of a domestic law anti-abuse provision is in conflict with the provisions of a tax treaty.	-
8.	Are issues where there is already an audit settlement between the tax authority and the taxpayer covered within the scope of MAP?	Yes	-	-
9.	Are double taxation cases resulting from bona fide taxpayer initiated foreign adjustments covered within the scope of MAP?	Yes	To the extent that foreign adjustments are initiated by bona fide taxpayers to comply with the domestic legislation of the other Contracting State.	-
10.	Are there any other treaty related issues not covered under s/n 5 to 9	No	-	-

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	which are not within the scope of MAP?			
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	-	-
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	<p>The submission of a MAP request is not impaired by the initiation of any judicial proceedings or administrative appeals.</p> <p>For those taxpayers whose tax situation has been settled by an administrative decision, they can request MAP assistance in order to change such decision.</p> <p>The Portuguese competent authority is bound by judicial decisions. When a judicial decision on the issues which are object of a MAP request becomes final before the conclusion of the MAP, the Portuguese competent authority shall inform the competent authority of other State about such decision and that is bound by it.</p> <p>The Portuguese competent authority will also request the competent authority of the other State to consider taking the necessary measures, as far as it finds possible, in order to avoid the double taxation not in accordance with the international legal instruments applicable to the case.</p>	-
13.	Are rules, guidelines and procedures	Yes	It applies with respect to MAP in general (which is	http://info.portaldasfinancas.gov.pt/pt/informacao_fiscal/convencoes

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	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?		publicly available). It applies with respect to MAP transfer pricing cases, Ministerial Order 1446-C/2001 (which is publicly available). The Code of Conduct of the EU Arbitration Convention may also apply.	evitar dupla tributacao/Documentos/Procedimento Amigavel Guia Pratico.pdf http://info.portaldasfinancas.gov.pt/pt/informacao_fiscal/legislacao/diplomas_legislativos/Documents/portaria_1446-c-2001_de_21_de_dezembro_i_serieb.pdf
14.	Are there specific timeline for the filing of a MAP request?	Yes	If the MAP request is presented under a bilateral tax treaty concluded by Portugal, the timeline for filling a MAP request is set out in the relevant Article of the treaty (usually, the case must be presented within three or two years from the first notification of the action resulting in taxation not in accordance with the provisions of the tax treaty). In what concerns the EU Arbitration Convention, the timeline is three years.	http://info.portaldasfinancas.gov.pt/pt/informacao_fiscal/convencoes_evitar_dupla_tributacao/convencoes_tabelas_doelib/pages/english-version.aspx
15.	Are guidance on multilateral MAPs publicly available?	No	Except for the Code of Conduct of the EU Arbitration Convention.	-
16.	Are tax collection procedures suspended during the period a MAP case is pending?	See detailed explanation	The tax collection procedures can be suspended under the terms provided by Article 169, paragraphs 1 and 2, of CPPT (Code of Tax Procedure), namely if the taxpayer presents a bank guarantee.	http://info.portaldasfinancas.gov.pt/pt/informacao_fiscal/codigos_tributarios/cppt/Pages/cppt169.aspx
17.	Are there any fees charged to taxpayers for a MAP request?	No	-	-

s/n		Response	Detailed explanation	Where publicly available information and guidance can be found
18.	Is there any other information available on availability and access to MAP?	No	-	-

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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 guidance contains an explanation of the procedures taken by the Portuguese competent authority, including the model timeframes applicable.	http://info.portaldasfinancas.gov.pt/pt/informacao_fiscal/convencoes_evitar_dupla_tributacao/Documents/Procedimento_Amigavel_Guia_Pratico.pdf
20.	Are statistics relating to the time taken to resolve MAP cases publicly available?	Yes	Statistics which are sent every year to the OECD are publicly available.	http://www.oecd.org/ctp/dispute/map-statistics-2006-2014.htm#portugal
21.	Is interest or penalties resulting from adjustments made pursuant to a MAP agreement waived or dealt with as part of the MAP procedure?	See detailed explanation	Interest is due on the tax resulting from the MAP agreement. Penalties and interest are not dealt with as part of the MAP procedure.	-
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	The Ministerial Order 320-A/2011 sets out the roles and responsibility of the Portuguese Competent Authority in what concerns MAP (DSRI). The Annual Activities Report includes the results of all the activities performed by the Portuguese Tax Authority including the activities relating to MAP cases.	http://info.portaldasfinancas.gov.pt/pt/informacao_fiscal/legislacao/diplomas_legislativos/Documents/Portaria_320-A_2011.pdf
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	Only in the treaty with Japan, in which it was agreed that the provisions on arbitration shall apply only to cases covered by Article 9 of the Convention; This was intended to be equivalent to the Arbitration	http://info.portaldasfinancas.gov.pt/pt/informacao_fiscal/convencoes_evitar_dupla_tributacao/convencoes_tabelas_doclib/Documents/CD

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			<p>Convention within the European Union.</p> <p>Portugal's current tax treaty policy is to propose a mandatory binding arbitration provision in its bilateral tax treaties, subject to the reservations formulated under the related provisions of the Multilateral Instrument.</p>	<p>T Japao DR RAR 50-2012.pdf</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? 	-	-	-
b.	<ul style="list-style-type: none"> Does your treaty policy allow you to include MAP 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>This explanation is included in the published MAP Guidance.</p>	<p>http://info.portaldasfinancas.gov.pt/pt/informacao_fiscal/convencoes_evitar_dupla_tributacao/Documents/Procedimento_Amigavel_Guia_Pratico.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>The guidance includes the following:</p> <p>Portuguese competent authority is bound by judicial decisions. When a judicial decision on the issues which are object of a MAP request becomes final before the conclusion of the MAP, the Portuguese competent authority shall inform the competent authority of the other State about such decision and that is bound by it.</p>	<p>http://info.portaldasfinancas.gov.pt/pt/informacao_fiscal/convencoes_evitar_dupla_tributacao/Documents/Procedimento_Amigavel_Guia_Pratico.pdf</p>

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			The Portuguese competent authority will also request the competent authority of the other State to consider taking the necessary measures, as far as it finds possible, in order to avoid the double taxation not in accordance with the international legal instruments applicable to the case.	
25.	Are taxpayers allowed to request for multi-year resolution through the MAP of recurring issues with respect to filed tax years?	Yes	-	-
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	The tax treaties concluded by Portugal with the following jurisdictions do not contain a provision that is the same or substantively the same as Article 9(2) of the OECD Model Tax Convention: Austria, Belgium, Brazil, Finland, France, Germany, Italy, Korea and the United Kingdom.	http://info.portaldasfinancas.gov.pt/pt/informacao_fiscal/convencoes_evitar_dupla_tributacao/convencoes_tabelas_doclib/pages/english-version.aspx
27.	Is there any other information available on resolution of MAP cases?	No	-	-

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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	The General Tax Law (LGT) provides for such timeframe.	http://info.portaldasfinancas.gov.pt/pt/informacao_fiscal/codigos_tributarios/lgt/pages/lei-geral-tributaria-indice.aspx
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?	No	-	-
30.	Are all mutual agreements reached through MAP implemented notwithstanding any time limits in your domestic law?	Yes	Where the applicable convention does not provide that any MAP agreement shall be implemented notwithstanding any time limits foreseen in the domestic law, the domestic law shall be applied. That means that for upwards adjustments there is a general limit of four years, but there is no limit for downwards adjustment(s) of taxpayer's tax position	http://info.portaldasfinancas.gov.pt/pt/informacao_fiscal/convencoes_evitar_dupla_tributacao/convencoes_tabelas_doelib/pages/english-version.aspx

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			<p>(according to article 45 of the General Tax Law).</p> <p>In this respect, however, it should be noted that in cases falling under the EU Arbitration Convention, the last sentence of its Article 6, paragraph 2, provides that any mutual agreement reached shall be implemented irrespective of any time limits prescribed by the domestic laws of the Contracting States concerned.</p>	
31.	Is there any other information available on the implementation of MAP agreements?	No	-	-