

## Brazil Dispute Resolution Profile

(Last updated: 13 February 2019)

### General Information

- **Brazil's tax treaties are available at:**

<http://idg.receita.fazenda.gov.br/acesso-rapido/legislacao/acordos-internacionais/acordos-para-evitar-a-dupla-tributacao/acordos-para-evitar-a-dupla-tributacao> *(in Portuguese)*

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

Special Secretary of Federal Revenue of Brazil (competent authority of Brazil)

Point of contact:

International Relations Office (Asain)

Address: Setor de Autarquias Sul, Quadra 3, Bloco "O", Sala 805

CEP: 70.079-900 – Brasília/DF

Email [asain@rfb.gov.br](mailto:asain@rfb.gov.br)

Note: The documents regarding MAP requests to be presented by Brazilian taxpayers should be delivered at the Tax Administration local office where the taxpayer has its domicile (*Delegacia da Receita Federal do Brasil, Centro de Atendimento ao Contribuinte*). From that on, the case will flow by electronic means, as any other administrative procedure involving taxpayers and the Tax Administration.

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

Currently, Brazil has no APA.

s/n		Response	Detailed explanation	Where publicly available information and guidance can be found
<b>A. Preventing Disputes</b>				
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 issues concerning the interpretation of treaties are published on the Internet without identifying the taxpayer because of tax secrecy.	<a href="http://normas.receita.fazenda.gov.br/sijut2consulta/consulta.action?termoBusca">http://normas.receita.fazenda.gov.br/sijut2consulta/consulta.action?termoBusca</a>
2.	Are bilateral APA programmes implemented? If yes:	No	-	-
a.	<ul style="list-style-type: none"> <li>Are roll-back of APAs provided for in the bilateral APA programmes?</li> </ul>	-	-	-
b.	<ul style="list-style-type: none"> <li>Are there specific timeline for the filing of an APA request?</li> </ul>	-	-	-
c.	<ul style="list-style-type: none"> <li>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?</li> </ul>	-	-	-
d.	<ul style="list-style-type: none"> <li>Are there any fees charged to taxpayers for a bilateral APA request?</li> </ul>	-	-	-
e.	<ul style="list-style-type: none"> <li>Are statistics relating to bilateral APAs publicly available?</li> </ul>	-	-	-
3.	Is training provided to your officials involved in the auditing /examination of taxpayers to ensure that any assessments made by them are	Yes	-	-

s/n		Response	Detailed explanation	Where publicly available information and guidance can be found
	in 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.

s/n		Response	Detailed explanation	Where publicly available information and guidance can be found
<b>B. Availability and Access to MAP</b>				
5.	Are transfer pricing cases covered within the scope of MAP?	Yes	-	Page 9 of the MAP guidance
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	-	-
8.	Are issues where there is already an audit settlement between the tax authority and the taxpayer covered within the scope of MAP?	No	Brazil has no audit settlement.	-
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	-	Page 39 of the MAP Guidelines

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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	-	Article 5, Paragraph 1, item XII and article 10 of Normative Instruction RFB 1,846/2018
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	-	<p><b>Normative Instruction RFB 1,846/2018</b></p> <p><a href="http://receita.economia.gov.br/aceso-rapido/legislacao/acordos-internacionais/map/in-rfb-no-1846-2018_en.pdf">http://receita.economia.gov.br/aceso-rapido/legislacao/acordos-internacionais/map/in-rfb-no-1846-2018_en.pdf</a></p> <p><b>MAP Guidelines</b></p> <p><a href="http://receita.economia.gov.br/aceso-rapido/legislacao/acordos-internacionais/map/manual-map_en.pdf">http://receita.economia.gov.br/aceso-rapido/legislacao/acordos-internacionais/map/manual-map_en.pdf</a></p>
14.	Are there specific timeline for the filing of a MAP request?	Yes	-	Annex II of Normative Instruction RFB 1,846/2018

s/n		Response	Detailed explanation	Where publicly available information and guidance can be found
15.	Are guidance on multilateral MAPs publicly available?	No	Brazil has no multilateral MAP.	-
16.	Are tax collection procedures suspended during the period a MAP case is pending?	No	-	-
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	-	-

s/n		Response	Detailed explanation	Where publicly available information and guidance can be found
<b>C. Resolution of MAP Cases</b>				
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?	No	-	-
20.	Are statistics relating to the time taken to resolve MAP cases publicly available?	Yes	Data available on the OECD MAP Statistics website, annually supplied by Brazil.	<a href="http://www.oecd.org/tax/dispute/mutual-agreement-procedure-statistics.htm">http://www.oecd.org/tax/dispute/mutual-agreement-procedure-statistics.htm</a>
21.	Is interest or penalties resulting from adjustments made pursuant to a MAP agreement waived or dealt with as part of the MAP procedure?	Yes	-	-
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:	No	-	-
a.	<ul style="list-style-type: none"> <li>Are there any legal limitations in your domestic law (for example in your constitution) to include MAP arbitration in your tax treaties?</li> </ul>	Yes	-	-

s/n		Response	Detailed explanation	Where publicly available information and guidance can be found
b.	<ul style="list-style-type: none"> <li>Does your treaty policy allow you to include MAP arbitration in your tax treaties?</li> </ul>	No	-	-
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	-	Pages 39-42 of the MAP Guidelines.
a.	<ul style="list-style-type: none"> <li>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?</li> </ul>	Yes	-	<p>Article 10 of the Normative Instruction RFB 1,846/2018.</p> <p>Page 41 of the MAP Guidelines.</p>
25.	Are taxpayers allowed to request for multi-year resolution through the MAP of recurring issues with respect to filed tax years?	Yes	-	Article 5, Paragraph 5, of Normative Instruction RFB 1,846/2018.
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	-	-
27.	Is there any other information available on	No	-	-



**Brazil Dispute Resolution Profile – Resolution of MAP Cases**

s/n		Response	Detailed explanation	Where publicly available information and guidance can be found
	resolution of MAP cases?			

s/n		Response	Detailed explanation	Where publicly available information and guidance can be found
<b>D. Implementation of MAP Agreements</b>				
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?	No	We are working to address this item	-
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	We are working to address this item	-
30.	Are all mutual agreements reached through MAP implemented notwithstanding any time limits in your domestic law?	No	The domestic law statute of limitation of 5 years applies to upwards and downwards adjustments of a taxpayer's position. However, where a downwards adjustment is foreseeable, the taxpayer may submit a restitution requirement together with the MAP request in order to suspend such limitation until the MAP case is closed.	-
31.	Is there any other information available on the implementation of MAP agreements?	No	-	-