

Curaçao Dispute Resolution Profile

(Last updated: 20 July 2021)

General Information

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

<https://verdragenbank.overheid.nl/nl>

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

Attn. Mrs. R Sillé, LL.M.

Director of Fiscal Affairs, Ministry of Finance

E-mail: runela.sille@gobiernu.cw

MAP requests relating to the residence of taxpayers for corporate tiebreaker procedures (*cases where a person other than an individual is a resident of both Contracting States and the Competent Authorities of the Contracting States shall determine by mutual agreement the Contracting State of which that person shall be deemed to be a resident for the purposes of the convention*) should be made to the Inspectorate of Taxes. These requests should be made to:

Attn. Mrs. J. Isenia, LL.M.

Inspectorate of Taxes Curaçao

Regentesselaan z/n

Curaçao

E-mail: jamila.isenia@gobiernu.cw

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

Attn. Mrs. J. Isenia, LL.M.

Inspectorate of Taxes Curaçao

Regentesselaan z/n

Curaçao

E-mail: jamila.isenia@gobiernu.cw

Curaçao 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?	No	Curaçao has 3 double tax conventions/agreements in force. One with the Netherlands (called “BRNC”), one with Aruba and Sint Martin (called “BRK”) and one with Norway. Curaçao never experienced difficulties in connection with the interpretation or application of the tax treaties.	-
2.	Are bilateral APA programmes implemented? If yes:	No	-	-
a.	<ul style="list-style-type: none"> Are roll-back of APAs provided for in the bilateral APA programmes? 	-	-	-
b.	<ul style="list-style-type: none"> Are there specific timeline for the filing of an APA request? 	-	-	-
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? 	-	-	--
d.	<ul style="list-style-type: none"> Are there any fees charged to taxpayers for a bilateral APA request? 	-	-	-

Curaçao Dispute Resolution Profile – Preventing Disputes

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e.	<ul style="list-style-type: none"> Are statistics relating to bilateral APAs publicly available? 	-	-	-
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	Tax officials receive regular training and have internal tax technical meetings on tax matters in general and tax treaty matters.	-
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.

Curaçao 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	Article 25 OECD Model Convention, or its equivalent incorporated in double tax conventions Curaçao has entered into, covers transfer pricing cases. This is mentioned in paragraph 2 of the MAP guidelines.	Available in Dutch and English: https://minfin.cw/beps-ami-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	In principle, domestic anti-abuse provisions are dealt with based on the domestic legislation and judicial proceedings. However, the above mentioned should not restrict access to the MAP.	-
8.	Are issues where there is already an audit settlement between the tax authority and the taxpayer covered within the scope of MAP?	Yes	This is explained in paragraph 9 of the MAP-guidelines	Available in Dutch and English: https://minfin.cw/beps-ami-map/
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	Yes	The formal initiation of the MAP, in principle, is dependent on the finalization of domestic judicial/administrative proceedings. In practice, however, Curaçao will initiate	Available in Dutch and English: https://minfin.cw/beps-ami-map/

Curaçao Dispute Resolution Profile – Availability and access to MAP

s/n		Response	Detailed explanation	Where publicly available information and guidance can be found
	jurisdiction?		the mutual agreement procedure simultaneously with pending domestic available remedies. We further refer to paragraph 8 of the Map-guidelines.	
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 formal initiation of the MAP, in principle, is dependent on the finalization of domestic judicial/administrative proceedings so after judicial and administrative remedies provided has been fully exhausted. We further refer to paragraph 8 of the Map-guidelines.	Available in Dutch and English: https://minfin.cw/beps-ami-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?	No	Annex A of the MAP-guidelines includes a detailed list of information a taxpayer should include in its request for a mutual agreement procedure.	Available in Dutch and English: https://minfin.cw/beps-ami-map/
14.	Are there specific timeline for the filing of a MAP request?	Yes	The double tax conventions Curaçao has entered into generally adhere to the three year filing deadline for a request for mutual agreement procedure as provided in article 25, paragraph 1, of the OECD Model Convention.	Available in Dutch and English: https://minfin.cw/beps-ami-map/
15.	Are guidance on multilateral MAPs publicly available?	No	Curaçao allows multilateral mutual agreement procedures under the equivalent of article 25 of the OECD Model Convention, but has no specific guidance available on this subject.	-
16.	Are tax collection procedures suspended during the period a MAP case is pending?	No	Upon request of a taxpayer, the collection procedures may be suspended during the period a MAP case is pending. This, however, only if it is Curaçao that caused the (potential) double taxation. We refer to paragraph 16 of the MAP-guidelines.	Available in Dutch and English: https://minfin.cw/beps-ami-map/
17.	Are there any fees charged to taxpayers for a MAP request?	No	-	-

Curaçao Dispute Resolution Profile – Availability and access to MAP

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	-	-

Curaçao 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	Paragraph 11 of the Map-guidelines sets a targeted timeframe to conduct MAP procedures in according with the BEPS action 14 standard, Curaçao seeks to resolve MAP cases within an average timeframe of 24 months, including the steps to be taken.	Available in Dutch and English: https://minfin.cw/beps-ami-map/
20.	Are statistics relating to the time taken to resolve MAP cases publicly available?	Yes	MAP statistics concerning double tax convention are on an annual basis published on the website of the OECD.	https://www.oecd.org/tax/dispute/2019-map-statistics-curaçao.pdf
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	The Curaçao CA is, pursuant to its domestic legislation, allowed to deviate from its domestic legislation regarding interest charges and refunds in case of a mutual agreement procedures. We refer to paragraph 16 of the MAP-guidelines.	Available in Dutch and English: https://minfin.cw/beps-ami-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?	No	Curaçao does not have a separate MAP office. MAP requests are being handled by the office of Fiscal Affairs.	-
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	Currently MAP arbitration is not available in the agreement with Norway. However, it is available in the agreement with the Netherlands. For the future Curaçao has the policy to incorporate an arbitration clause – based on article 25(5) of the OECD Model Convention – in all of its double tax convention. This of course in dialogue with the treaty partner.	-

Curaçao Dispute Resolution Profile – Resolution of MAP cases

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?	No	-	-
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Curaçao Dispute Resolution Profile – Resolution of MAP cases

s/n		Response	Detailed explanation	Where publicly available information and guidance can be found
b.	<ul style="list-style-type: none"> Does your treaty policy allow you to include MAP arbitration in your tax treaties? 	Yes	-	-
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>	No	We refer to paragraph 8 of our MAP-guidelines.	Available in Dutch and English: https://minfin.cw/beps-ami-map/
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	We refer to paragraph 8 of the MAP-guidelines, where is stated that a regular MAP procedure would normally start after all domestic administrative and judicial remedies have been exhausted. So regardless of the outcome of a court case Curacao will give access to MAP and can deviate from the decision of its domestic court.	Available in Dutch and English: https://minfin.cw/beps-ami-map/
25.	Are taxpayers allowed to request for multi-year resolution through the MAP of recurring issues with respect to filed tax years?	Yes	Annex-A of the MAP-guidelines defines what information needs to be included a request for the initiation of the mutual agreement procedure. This specifically mentions that it may concern multiple tax years.	Available in Dutch and English: https://minfin.cw/beps-ami-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	The tax treaty with Norway is an older convention which does not include this provision. However, Curaçao believes that corresponding adjustment should be granted even in the absence equivalent of article 9, paragraph 2, of the OECD Model Convention. Corresponding adjustments should be granted following the application of the mutual agreement procedure of article 25 of the OECD Model Convention.	-

Curaçao 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	-	-

Curaçao 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?	No	-	-
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	Both BRNC and the Treaty with Norway includes this, in accordance with the last sentence of article 25, paragraph 2 of the OECD Model Convention. We refer to paragraph 8 and 11 of the MAP-guidelines.	Available in Dutch and English: https://minfin.cw/beps-ami-map/
31.	Is there any other information available on the implementation of MAP agreements?	No	-	-