

The Netherlands Dispute Resolution Profile

(Last updated: 17 May 2022)

General Information

- **The Netherlands tax treaties are available at:**

<https://verdragenbank.overheid.nl/nl> (Dutch)

<https://verdragenbank.overheid.nl/en> (English)

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

[Dutch]

Belastingdienst/Grote Ondernemingen

T.a.v. MAP-team

Postbus 30206

2500 GE Den Haag

[English]

Netherlands Tax Administration/Large Business

Attn. MAP-team

PO Box 30206

2500 GE The Hague

f: +31-88 442 7938 / e: internationalezaken@minfin.nl

- **Bilateral and multilateral APA request should be made to:**

[Dutch]

Belastingdienst/Grote Ondernemingen

T.a.v. MAP-team

Postbus 30206

2500 GE Den Haag

[English]

Netherlands Tax Administration/Large Business

Attn. MAP-team

PO Box 30206

2500 GE The Hague

f: +31-88 442 7938 / e: internationalezaken@minfin.nl

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

[Dutch]

Belastingdienst/Grote Ondernemingen

T.a.v. Behandelteam IFZ

Postbus 30206

2500 GE Den Haag

[English]

Netherlands Tax Administration/Large Business

Attn. Team for International Fiscal Certainty

PO Box 30206

2500 GE The Hague

A. Preventing Disputes				
s/n		Response	Detailed explanation	Where publicly available information and guidance can be found
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	Competent authority agreements that are of a general nature are published in the Netherlands Government Gazette (“Staatscourant”). This may also concern agreements that regard a category of taxpayers. Competent authority agreements for cases concerning individual taxpayers are not published.	Available at: https://zoek.officielebekendmakingen.nl/uitgebreidzoeken (only available in Dutch)
2.	Are bilateral APA programmes implemented? If yes:	Yes	The Netherlands has implemented a (bilateral) APA programme via the following decrees: <ul style="list-style-type: none"> • Decree on transfer pricing of 19 June 2019 (DGB 2019/13003) assigns competence to the Team for International Fiscal Affairs (“Behandelteam IFZ”) of the Netherlands Tax Administration for entering into unilateral APA’s • Decree on mutual agreement procedures of 11 June 2020 (no. 2020-0000101607) assigns competence to the MAP-team of the Netherlands Tax Administration for entering into bilateral and multilateral APA’s. 	Available at: https://wetten.overheid.nl/BWBR0042342/2021-08-19 (only available in Dutch) Available at: https://wetten.overheid.nl/BWBR0043694/2022-01-01 (only available in Dutch)

a.	Are roll-back of APAs provided for in the bilateral APA programmes?	Yes	<p>The Netherlands has not entered into bilateral APA programmes as such, but negotiates and enters into bilateral (and multilateral) APA's under the equivalent of article 25(3) OECD Model Convention, as included in the applicable tax treaty.</p> <p>Paragraph 9.5 of the Decree on mutual agreement procedures of 11 June 2020 (no. 2020-0000101607) allows for roll-back of bilateral (and multilateral) APA's. The actual possibility of a roll-back is dependent on the acceptance in the other Contracting State(s) and is only possible in case there is no (partial) non-taxation as mentioned in section 8.2 of the Decree on transfer pricing of 19 June 2019 (DGB 2019/13003).</p>	<p>Available at: https://wetten.overheid.nl/BWBR0043694/2022-01-01 (only available in Dutch) and https://wetten.overheid.nl/BWBR0042342/2021-08-19 (only available in Dutch)</p>
b.	Are there specific timelines for the filing of an APA request?	No	-	-
c.	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	<p>Decree on transfer pricing of 19 June 2019 (DGB2019/13003) (unilateral) and Decree on mutual agreement procedures of 11 June 2020 (no. 2020-0000101607) (bilateral and multilateral) include rules, guidelines and procedures on how taxpayers can request for (bilateral) APA's and describes the process from the submission of a request up to the conclusion of an APA.</p> <p>Note that in general all bilateral APA's entered into by the Netherlands' competent authority are converted into an unilateral APA with the respective taxpayer.</p>	<p>Available at: https://wetten.overheid.nl/BWBR0042342/2021-08-19 (only available in Dutch) and https://wetten.overheid.nl/BWBR0043694/2022-01-01 (only available in Dutch)</p>

d.	Are there any fees charged to taxpayers for a bilateral APA request?	No	-	-
e.	Are statistics relating to bilateral APAs publicly available?	Yes	<p>APA statistics of the Netherlands are published on an annual basis on the website of the EU Joint Transfer Pricing Forum. This does not only concern (bilateral) APAs with other EU Member States, but all concluded APAs on a worldwide basis.</p> <p>All bilateral APA's are converted into unilateral APA. Statistics on unilateral APA's are annually published in the annual report of the Team for International Fiscal Certainty ("Behandelteam IFZ") of the Netherlands Tax Administration, which is publicly available.</p>	<p>Available at: https://ec.europa.eu/taxation_customs/news/statistics-apas-and-maps-eu-2019-07-22_en</p> <p>The latest available report is available at: https://zoek.officielebekendmakinge.nl/blg-991577</p> <p>Summaries of (bilateral) APA's are available at: https://www.belastingdienst.nl/wps/wcm/connect/bldcontentnl/standaard_functies/prive/contact/rechten_en_plichten_bij_de_belastingdienst/ruling/apa</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	<p>Tax inspectors can request training at the Tax Academy. Part of the curriculum includes issues related to interpretation and application of tax treaties.</p> <p>The Netherlands Tax Administration further provides for training on the job, through inter alia the Coordination Group for Transfer Pricing.</p>	-

<p>4.</p>	<p>Is other information available on preventing tax treaty-related disputes?</p>	<p>Yes</p>	<p>Paragraph 8.1 of the Decree on mutual agreement procedures of 11 June 2020 (no. 2020-0000101607) allows the tax inspector – at the request of the taxpayer and on the basis of law and administrative practices of the Netherlands (including the relevant tax treaty) – to unilaterally grant a corresponding adjustment in transfer pricing cases without having recourse to the MAP-process.</p> <p>Paragraph 8.2 of that Decree also allows for such an adjustment in cases when the tax assessment of the relevant taxpayer has become irrevocable. In such a situation the tax inspector is allowed to unilaterally grant a corresponding adjustment provided that the following conditions are met:</p> <ul style="list-style-type: none"> a) The taxpayer was reasonably not able to request for a corresponding adjustment within the domestic statute of limitation of five years b) The taxpayer had access to the mutual agreement procedure at the time of submission of his request for a corresponding adjustment c) A mutual agreement procedure would have led to the same outcome; the granting of an unilateral corresponding adjustment on the basis that the primary adjustment of the treaty partner constituted a correct application of the tax treaty. 	<p>Available at: https://wetten.overheid.nl/BWBR0043694/2022-01-01 (only available in Dutch)</p>
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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

B. Availability and Access to MAP				
s/n		Response	Detailed explanation	Where publicly available information and guidance can be found
5.	Are transfer pricing cases covered within the scope of MAP?	Yes	<p>The Netherlands holds the view that article 25 OECD Model Convention, or its equivalent incorporated in tax treaties the Netherlands has entered into, covers transfer pricing cases.</p> <p>Paragraph 1.6 of the Decree on mutual agreement procedures of 11 June 2020 (no. 2020-0000101607) refers to transfer pricing cases as examples of cases for which the MAP-process is available.</p>	<p>Available at: https://wetten.overheid.nl/BWBR0043694/2022-01-01 (only available in Dutch)</p>
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	<p>Paragraph 4.5 of the Decree on mutual agreement procedures of 11 June 2020 (no. 2020-0000101607) notes that the Netherlands believes that (criminal) offenses should be dealt with by domestic legislation and not by leaving double taxation in existence. The Netherlands competent authority therefore holds the view that the presence of a punishable act should, in principle, not block a taxpayer's access to the mutual agreement procedure or the continuation of this procedure.</p> <p>However, article 8 EU Arbitration Convention</p>	<p>Available at: https://wetten.overheid.nl/BWBR0043694/2022-01-01 (only available in Dutch)</p>

			<p>allows EU Member States may refuse to refer a case to the mutual agreement procedure / arbitration procedure if a taxpayer and/or its associated enterprises are liable to a serious penalty in relation to the profit adjustment. The Netherlands defined the term ‘<i>serious penalty</i>’ as:</p> <p><i>‘the term ‘a serious penalty’ means a penalty imposed by a court due to intentionally committing an offence as listed in Article 68(2), or Article 69(1) or (2) of the General Tax Act.’</i></p> <p>Further, under the Dispute Resolution Directive (2017/1852), a EU Member State may deny access to the dispute resolution procedures when in that Member State penalties were imposed in relation to adjusted income or capital for tax fraud, wilful default and gross negligence. The Netherlands has implemented this provision in article 5.2 Tax Arbitration Act. Access to the dispute resolution procedures may be denied in cases when penalties were imposed pursuant to Article 68 and/or 69 of the General Tax Act.</p>	
8.	Are issues where there is already an audit settlement between the tax authority and the taxpayer covered within the scope of MAP?	Yes	Paragraph 4.5 of the Decree on mutual agreement procedures of 11 June 2020 (no. 2020-0000101607) clarifies that in situations where the taxpayer has entered into a settlement agreement with the tax inspector (“vaststellingsovereenkomst”) access to the mutual agreement procedure will not be denied.	<p>Available at: https://wetten.overheid.nl/BWBR0043694/2022-01-01 (only available in Dutch)</p>

			When initiating the mutual agreement procedure, the Netherlands competent authority is not bound by the terms of the settlement agreement. Any adjustment, facts or other agreements with the taxpayer will be weighed again in the context of the procedure, and as a result (part of) the settlement agreement could lapse.	
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	<p>Paragraph 3.6 of the Decree on mutual agreement procedures of 11 June 2020 (no. 2020-0000101607) allows taxpayers to – in line with the wording of article 25(1) OECD Model Convention – simultaneously request for the initiation of the mutual agreement procedure while domestic (administrative/judicial) remedies are pending.</p> <p>When domestic remedies are pending in the Netherlands, the MAP-process will be stalled for the duration of these remedies, unless the taxpayer has informed the competent authority that these remedies have been suspended or terminated. In that situation, the MAP-process will be continued.</p>	<p>Available at: https://wetten.overheid.nl/BWBR0043694/2022-01-01 (only available in Dutch)</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	Reference is made to the answer to question 11. The Netherlands' competent authority is not bound by decisions of domestic courts and therefore can deviate from such decisions in MAP.	Available at: https://wetten.overheid.nl/BWBR0043694/2022-01-01 (only available in Dutch)
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>The Decree on mutual agreement procedures of 11 June 2020 (no. 2020-0000101607) provides for an extensive description of the MAP-process and how the Netherlands competent authority applies this process in practice.¹</p> <p>Paragraphs 3.2 and 3.3 of that Decree specifies the general filing requirements for MAP-requests under bilateral tax treaties the Netherlands entered into, the EU Arbitration Convention and under the Dispute Resolution Directive (2017/1852). MAP requests can be filed in the Dutch and English language.</p> <p>Annex A and B of that Decree provide for a list of information taxpayers need to include in their MAP-request based on the Dispute Resolution Directive (2017/1852) respectively bilateral tax treaties/EU Arbitration Convention.</p> <p>Further, as is noted in section 3.3 of that Decree, for transfer pricing cases, taxpayers also need to submit an additional form.</p>	<p>Available at: https://wetten.overheid.nl/BWBR0043694/2022-01-01 (only available in Dutch)</p> <p>This form is available at: https://www.rijksoverheid.nl/onderwerpen/belastingverdragen</p>

¹ The Decree on MAP-corporate tiebreaker cases of 9 December 2019 (no. 2019-25404) includes procedural rules for the MAP-process for this type of cases, including information on filing of requests to initiate this process. Available at: <https://wetten.overheid.nl/BWBR0042921/2019-12-21> (only available in Dutch).

14.	Are there specific timelines for the filing of a MAP request?	Yes	<p>Most tax treaties the Netherlands has entered into contain a three-year period for filing of a MAP-request, as provided in article 25(1)OECD Model Convention. The following treaties, however, contain a deviating filing period:</p> <ul style="list-style-type: none"> • <i>No filing period:</i> Austria, the Czech Republic, Israel, Korea, Luxembourg, Morocco, Singapore, the Slovak Republic, Spain, Surinam, Thailand, Turkey and Zambia • <i>2-years:</i> Canada, Italy, Malaysia, Qatar, Philippines and Venezuela² • <i>5-years:</i> Brazil, New-Zealand, and Former Republic of Yugoslavia • <i>6-years:</i> the United States. <p>For those treaties that do not contain a filing period, domestic law of the Netherlands does not contain any limitations for filing of MAP-requests.</p> <p>Paragraph 3.5 of the Decree on mutual agreement procedures of 11 June 2020 (no. 2020-0000101607) include specific rules on when the filing period for MAP-requests commence and when such request is considered as being timely filed.</p>	<p>Available at: https://verdragenbank.overheid.nl/nl (Dutch) https://verdragenbank.overheid.nl/en (English)</p> <p>Available at: https://wetten.overheid.nl/BWBR0043694/2022-01-01 (only available in Dutch)</p>
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² Note that as an effect of the Multilateral Instrument, the tax treaties with Canada, Italy, Malaysia and Qatar will be of have been amended to include a three-year filing period. Available at: <https://www.oecd.org/tax/treaties/mli-matching-database.htm>

15.	Are guidance on multilateral MAPs publicly available?	No	The Netherlands allows multilateral mutual agreement procedures under the equivalent of article 25 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?	Yes	<p>Paragraph 10.1 of the Decree on mutual agreement procedures of 11 June 2020 (no. 2020- (no. 2020-0000101607) stipulates that, upon request by the taxpayer, suspension of tax collection will be granted from the moment of submission of the MAP-request up to the date the mutual agreement procedure (and possibly arbitration procedure) has been completed. This, however, only if is the cause of (potential) double taxation lies in the Netherlands.</p> <p>The legal basis for such suspension is article 25.2.4 of the Guidance on collection of taxes (“Leidraad Invordering 2008”).</p>	<p>Available at: https://wetten.overheid.nl/BWBR0043694/2022-01-01 (only available in Dutch)</p> <p>Available at: https://wetten.overheid.nl/BWBRO024096/2022-01-01 (only available in Dutch)</p>
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?	Yes	The website of the Netherlands government provides some basic information on the availability of the MAP-process for cases when taxpayers occur double taxation or taxation not in accordance with the applicable tax treaty.	<p>Available at: https://www.rijksoverheid.nl/onderwerpen/inkomstenbelasting/vraag-en-antwoord/er-is-een-belastingverdrag-maar-ik-betaal-toch-dubbele-belasting-wat-moet-ik-doen (only available in Dutch)</p>

C. Resolution of MAP Cases				
s/n		Response	Detailed explanation	Where publicly available information and guidance can be found
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	<p>Paragraph 5.1 of the Decree on mutual agreement procedures of 11 June 2020 (no. 2020-0000101607) notes that the Netherlands strives at concluding a mutual agreement procedure within a timeframe of two years. It further specifies when such timeframe commences under tax treaties the Netherlands entered into, the EU Arbitration Convention and the Dispute Resolution Directive (2017/1852).</p> <p>Paragraph 4.1 and 4.2 of that Decree also include the timeframes for taking a decision on the acceptance of a MAP-request (including requesting of additional information) under the Dispute Resolution Directive (2017/1852), bilateral tax treaties and the EU Arbitration Convention, while paragraph 5.2 further details the steps to be taken during the mutual agreement procedure.</p>	<p>Available at: https://wetten.overheid.nl/BWBR0043694/2022-01-01 (only available in Dutch)</p>
20.	Are statistics relating to the time taken to resolve MAP cases publicly available?	Yes	<p>MAP statistics concerning tax treaties (including those under the EU Arbitration Convention and the Dispute Resolution Directive (2017/1852) are on an annual basis published on the website of the OECD. This, inter alia, includes information on the average time taken to resolve MAP cases.</p> <p>MAP statistics specifically concerning the application of the Dispute Resolution Directive</p>	<p>Available at: https://www.oecd.org/ctp/dispute/mutual-agreement-procedure-statistics.htm</p> <p>Available at: https://ec.europa.eu/taxation_cust</p>

			(2017/1852) in the Netherlands are annually published on the website of the European Commission.	ms/resolution-tax-disputes-european-union_en
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	<p>Article 30(k) of the General Tax Act and article 31(a) of the Tax Collection Act 1990 allows the competent authority to deviate from domestic legislation regarding interest charges and refunds in a mutual agreement procedure.</p> <p>Paragraph 10.2 of the Decree on mutual agreement procedures of 11 June 2020 (no. 2020-0000101607) clarifies that the taxpayer can, with the submission of a MAP-request, make a substantiated and quantified request for moderation of the interest charged in relation to the issue for which MAP is being requested. When it is the Netherlands Tax Administration that charged interest and provided there is no culpable act by the taxpayer, the Netherlands competent authority is willing to reduce interest on the basis of reasonableness and fairness. The calculation of such reduction will in principle be based on the rate of interest used by the treaty partner when refunding taxes.</p> <p>Furthermore, as specified in paragraph 3.3.10 of the 2020 Memorandum on tax treaty policy of the Netherlands, the Netherlands aims at including a provision in its tax treaties dealing with penalties, interest charges and refunds in relation to the</p>	<p>Available at: https://wetten.overheid.nl/BWBR0002320/2022-01-01#HoofdstukVA https://wetten.overheid.nl/BWBR0004770/2022-01-01#HoofdstukV (only available in Dutch)</p> <p>Available at: https://wetten.overheid.nl/BWBR0043694/2022-01-01 (only available in Dutch)</p> <p>Available at: https://open.overheid.nl/repository/onl-c4bb77ba-23c2-4156-af23-0592804b05a6/1/pdf/Notitie%20Fiscaal%20Verdragsbeleid%202020.pdf (only available in Dutch)</p>

			<p>mutual agreement procedure.³</p> <p>More specific, the Netherlands entered into a competent authority agreement with France⁴ and the United States⁵, inter alia, relating to interest charges and refunds as part of the mutual agreement procedure.</p>	<p>Available at:</p> <p>https://zoek.officielebekendmakinge.n.nl/stcrt-2003-196-p12-SC61525.html</p> <p>and</p> <p>https://www.rijksoverheid.nl/documenten/richtlijnen/2010/12/08/administratieve-afspraken-onderling-overlegprocedure-met-frankrijk</p>
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	<p>The assignment of competence for handling MAP-cases, including the role and responsibilities of the competent authority, are set forth in:</p> <ul style="list-style-type: none"> • <u>Corporate tiebreaker cases</u>: Decree of the Netherlands State Secretary of Finance of 12 November 2015 (IZV 2015/832) • <u>MAP-cases under the equivalent of article 25(1) OECD Model Tax Convention</u>: Decree of the Netherlands State Secretary of Finance of 15 November 2021 (no. 2021-0000226675) <p>Note, as is specified in 1.7 of the Decree on mutual agreement procedures of 11 June 2020 (no. 2020-</p>	<p>Available at:</p> <p>https://wetten.overheid.nl/BWBR0037211/2016-01-01 (only available in Dutch)</p> <p>and</p> <p>https://zoek.officielebekendmakinge.n.nl/stcrt-2021-47638.html (only available in Dutch)</p> <p>Available at:</p> <p>https://zoek.officielebekendmakinge</p>

³ So far the Netherlands has included provisions relating hereto in double tax conventions with Albania, Bahrain, Barbados, Ethiopia, Ghana, Poland, Slovenia, Switzerland, Uganda and United Arab Emirates. Such provision generally reads: *“The competent authorities of the Contracting States may also agree, with respect to any agreement reached as a result of a mutual agreement procedure as meant in Article 25, if necessary contrary to their respective national legislation, that the State in which there is an additional tax charge as a result of the aforementioned agreement shall not impose any increases, surcharges, interest and costs with respect to this additional tax charge, if the other State in which there is a corresponding reduction of tax as a result of the agreement refrains from the payment of any interest due with respect to such a reduction of tax”*.

⁴ Mutual agreement between competent authorities of France and the Netherlands under article 27 of the double tax conventions – September 21, 2010.

⁵ Administrative Arrangements for the Implementation of the Mutual Agreement Procedure (Article 29) of the Convention Between the Kingdom of the Netherlands and the United States of America for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and Capital Gains (Signed on December 18, 1992, as Amended by Protocols).

			0000101607), that the Netherlands Ministry of Finance remains competent to handle MAP-cases of a general nature under the equivalent of article 25(3) of the OECD Model Tax Convention.	n.nl/stcrt-2020-32689.html (only available in Dutch)
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	<p>It is long standing policy of the Netherlands to include mandatory and binding arbitration in its tax treaties as a supplement to the mutual agreement procedure. This policy is included in:</p> <ul style="list-style-type: none"> • Paragraph 2.17 of the 2011 Memorandum on tax treaty policy of the Netherlands • Paragraph 2.4/3.3.10 of the 2020 Memorandum on tax treaty policy of the Netherlands <p>The Netherlands has included in 44 of its tax treaties an arbitration clause as a supplement to the mutual agreement procedure. The arbitration clause in 26 of those 44 treaties was included prior to 2008 and do not all provide for a mandatory and binding arbitration procedure. As of 2008, 16 tax treaties contain a mandatory and binding arbitration procedure based on article 25(5) OECD Model Tax Convention. This concerns, inter alia, treaties with Germany, Ireland, Japan and the United Kingdom, with whom also rules have been agreed on how to apply the arbitration procedure in practice.</p> <p>Further to the above, the Netherlands has opted for arbitration in part IV of the Multilateral</p>	<p>Available at: https://www.eerstekamer.nl/behandeling/20110211/notitie_fiscaal_verdragsbeleid_nfv and https://open.overheid.nl/repository/onl-c4bb77ba-23c2-4156-af23-0592804b05a6/1/pdf/Notitie%20Fiscaal%20Verdragsbeleid%202020.pdf (only available in Dutch)</p> <p>Available at: https://verdragenbank.overheid.nl/nl (Dutch) https://verdragenbank.overheid.nl/en (English)</p> <p>Available at: https://www.oecd.org/tax/treaties/m</p>

			Instrument. As a result, arbitration will be available in an additional number of treaties. Specifically in relation to EU Member States, arbitration is available for MAP-cases under the EU Arbitration Convention and the Dispute Resolution Directive (2017/1852).	li-matching-database.htm
a.	Are there any legal limitations in your domestic law (for example in your constitution) to include MAP arbitration in your tax treaties?	N/A	-	-
b.	Does your treaty policy allow you to include MAP arbitration in your tax treaties?	N/A	-	-
24.	Is the explanation of the relationship between the MAP and domestic law administrative and judicial remedies publicly available? If yes:	Yes	Reference is made to the answer to question 11.	Reference is made to the answer to question 11.
a.	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	As a general principle, the Netherlands competent authority is not restricted to deviate from decisions of its domestic courts in a MAP agreement. This is explicated in paragraph 2.17 of the 2011 Memorandum on tax treaty policy, in the context of the arbitration procedure under article 25(5) OECD Model Tax Convention. It is there stated that if the treaty partner is also allowed to deviate from a court decision, the Netherlands is in favour of	Available at: https://www.eerstekamer.nl/behandeling/20110211/notitie_fiscaal_verdrag_sbeleid_nfv (only available in Dutch)

			not including the sentence of article 25(5) stipulating that cases cannot proceed to the arbitration procedure if in one of the contracting states a domestic court has already issued a decision relating to the case under review.	
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 and B of Decree on mutual agreement procedures of 11 June 2020 (no. 2020-0000101607) specifies what information needs to be included a request for the initiation of the mutual agreement procedure under the Dispute Resolution Directive (2017/1852) respectively bilateral tax treaties/the EU Arbitration Convention. These annexes specifically mention that such request may concern multiple fiscal years.	Available at: https://wetten.overheid.nl/BWBR0043694/2022-01-01 (only available in Dutch)
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	No	The tax treaty policy of the Netherlands is to incorporate the equivalent of article 9(2) OECD Model Convention in all its tax treaties. Most tax treaties contain this provision, except for a number of relatively older treaties. ⁶ This concerns treaties with Austria, Bermuda, Brazil, Bulgaria, the Czech Republic, France, Ireland, Israel, Italy, Korea, Luxembourg, Malaysia, Morocco, Philippines, Singapore, the Slovak Republic, Spain, Thailand, Former Republic of Yugoslavia and Zambia. ⁷	Available at: https://verdragenbank.overheid.nl/nl (Dutch) https://verdragenbank.overheid.nl/en (English)

⁶ This concerns tax treaties with Austria, Bermuda, Brazil, Bulgaria, Canada, the Czech Republic, France, Israel, Italy, Japan, Korea, Luxembourg, Malaysia, Morocco, Panama, Philippines, Singapore, the Slovak Republic, Spain, Tajikistan, Thailand and Former Republic of Yugoslavia.

⁷ Note that as an effect of the Multilateral Instrument, some of these treaties have been or will be modified by the Multilateral Instrument to include the equivalent of article 9(2) OECD Model Tax Convention.

Available at: <https://www.oecd.org/tax/treaties/mli-matching-database.htm>

	included in all of your jurisdiction's tax treaties)?		Note that even in the absence equivalent of article 9(2) OECD Model Convention in its tax treaties, the Netherlands believes that corresponding adjustments should be granted following the application of the mutual agreement procedure of article 25 OECD Model Convention.	
27.	Is there any other information available on resolution of MAP cases?	No	-	-

D. Implementation of MAP Agreements				
s/n		Response	Detailed explanation	Where publicly available information and guidance can be found
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	<p>Almost all of the tax treaties the Netherlands entered into include the equivalent of the second sentence of article 25(2) OECD Model Convention, concerning the implementation of a mutual agreement reached notwithstanding any time limits in the domestic law of the contracting states. For these treaties MAP agreements will be implemented regardless of the domestic statute of limitation of five years.</p> <p>However, some treaties do not contain this second sentence. This concerns tax treaties with Austria, Brazil, Canada, the Czech Republic, Indonesia, Israel, Italy, Korea, Luxembourg, Malaysia, Mexico, Morocco, Nigeria, Philippines, Singapore, the Slovak Republic, Spain, Surinam, Tajikistan, Thailand and Former Republic of Yugoslavia.⁸ For these treaties, where the tax assessment concerned has already become final once the Netherlands competent authority enters into a MAP-agreement, paragraph 6.2 of the Decree on mutual agreement procedures of 11 June 2020 (no. 2020-0000101607) and article 17(16) of the Decree on administrative tax law of 18 December 2013 (BLBK2013/995M) allows the tax inspector to implement such agreement regardless of the domestic statute of limitation of five years.</p>	<p>Available at: https://verdragenbank.overheid.nl/nl (Dutch) https://verdragenbank.overheid.nl/en (English)</p> <p>Available at: https://wetten.overheid.nl/BWBR0043694/2022-01-01 (only available in Dutch) and https://zoek.officielebekendmakingen.nl/stcrt-2013-35879.html (only available in Dutch)</p>
31.	Is there any other information available on the implementation of MAP agreements?	No		-

⁸ Note that as an effect of the Multilateral Instrument, the tax treaties with Austria, the Czech Republic, Indonesia, Israel, Italy, Korea, Luxembourg, Malaysia, Morocco, Nigeria, Singapore and the Slovak Republic will be of have been amended to include the second sentence of article 25(2) OECD Model Tax Convention. Available at: <https://www.oecd.org/tax/treaties/mli-matching-database.htm>.