

Mutual Agreement Procedures (MAP) The Netherlands

Dutch considerations for
dispute resolution procedures

Introduction

Cross-border tax disputes increasingly arise from differing treaty interpretation resulting in transfer pricing adjustments, mismatches in the recognition of or profit attribution to permanent establishments or withholding tax issues. Where one jurisdiction imposes an adjustment without corresponding relief in the other, double taxation can persist.

The Mutual Agreement Procedure (MAP) can be an effective dispute resolution mechanism. MAP is a government-to-government process under which the competent authorities (CA) of two or more jurisdictions try to resolve cases where taxation is not in accordance with the relevant treaty. MAP is a treaty- or EU law-based procedure that operates alongside domestic remedies to navigate cross-border tax controversies. This flyer outlines when MAP may be relevant, legal basis for MAP including general positives and negatives of each and the relevant procedures.

Issues that can be resolved through MAP include:

- Transfer pricing
- Dual residence
- Withholding tax
- Permanent establishment
- Characterization conflicts
- Non-discrimination
- Cross-border workers

Legal bases for MAP

Tax treaty provision based on Article 25 of the OECD or UN Model Tax Convention

- Broad scope
- Most guidance and competent authority experience
- No resolution guaranteed if there is no arbitration clause (unless binding arbitration included in Treaty, e.g. following MLI)
- Limited procedural safeguards

EU Arbitration Convention (90/436/EEC)

- Competent authorities having experience with the EU Arbitration Convention
- Automatic arbitration if the issue is not resolved during a MAP
- Limited in scope to transfer pricing and profit allocation and only within the EU
- Severe (criminal) penalties may limit access to the arbitration procedure

EU Tax Dispute Resolution Directive (Council Directive (EU) 2017/1852)

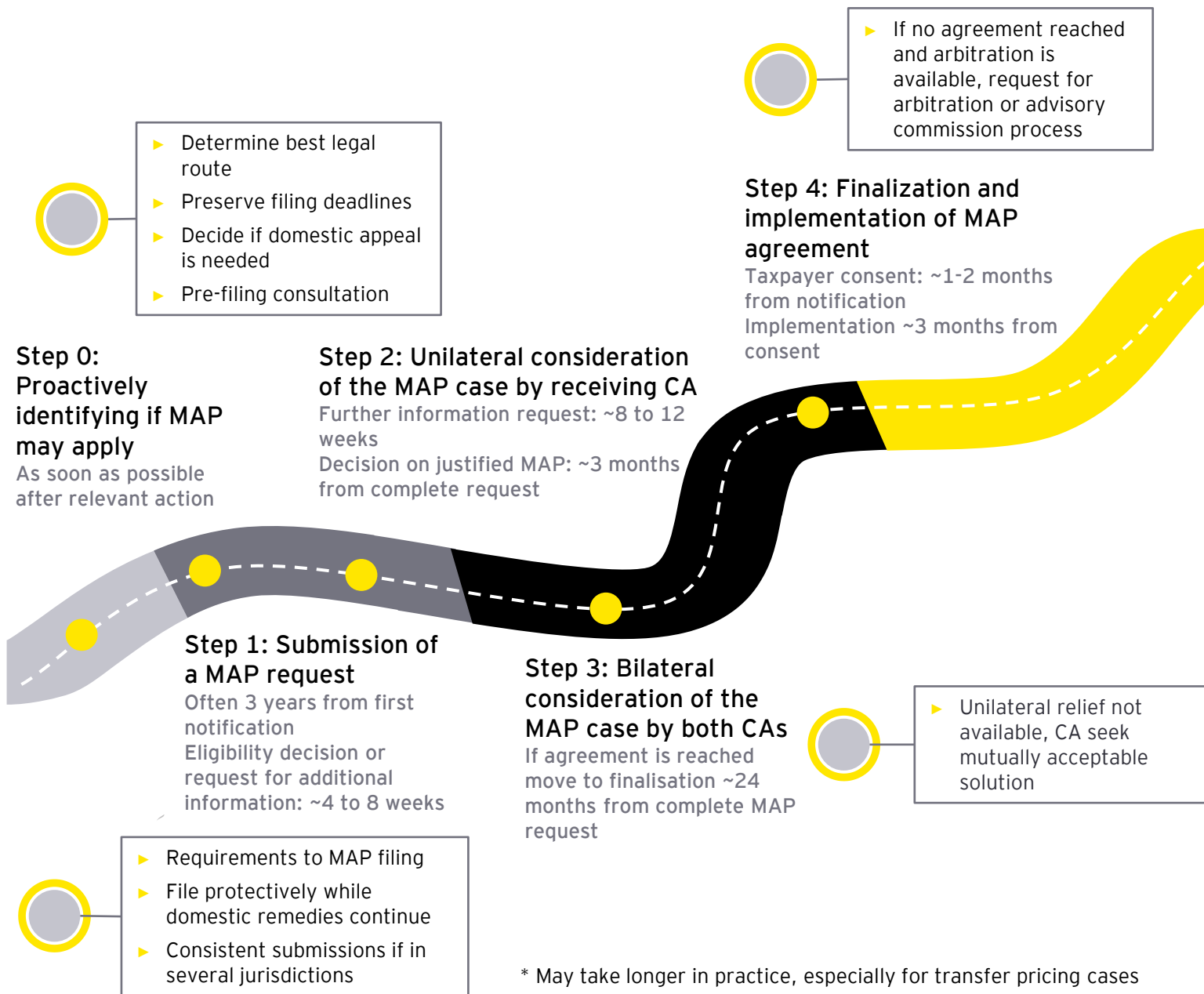
- Broad scope with mandatory and binding arbitration upon taxpayer request
- Clear procedural safeguards, including time limits and domestic remedies
- Procedural aspects, including divergent interpretations, make it complex, with the risk of procedural missteps
- Arbitration can be excluded in case of severe (criminal) penalties or absent double taxation

Suspension of tax collection, interest and penalties

The best practices laid down in the Manual on Effective Mutual Agreement Procedures (2026 edition) (MEMAP) support suspension of tax collection pending the MAP. The Dutch MAP Decree contains guidance in the Dutch context in this regard.

Taxpayers might experience residual impact from double taxation even in cases where the underlying double taxation has been resolved through MAP. This may be the case if the countries involved in the negotiations have different perspectives on the interest and penalties applicable to the tax liability. Whilst some countries waive the interest and penalties in cases where the issue is resolved under MAP, others consider that the interest and penalties do not fall within the scope of a MAP. The time to address such issues is during the early stages of the process, not after the MAP agreement has been reached.

Typical MAP process and timeline based on best practices(*)



How EY Netherlands can help you

- ✓ Going into MAP requires careful consideration at the front-end of the process. We help selecting the **right legal basis** and carefully crafting the **MAP request**.
- ✓ MAP may have **complex** interaction with domestic remedies (e.g., litigation). We guide you through the process(es).
- ✓ Sometimes, MAP takes longer than expected. We help keep pressure on the process and, where available, initiating arbitration proceedings.
- ✓ Our International Tax Controversy & Litigation team helps from a Dutch perspective and is experienced with coordinating bilateral and multilateral MAPs in multiple jurisdictions

EY Netherlands' team members

If you have any questions related to cross-border tax controversy, please feel free to reach out to one of EY's professionals.

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