

Lithuania Dispute Resolution Profile

(Last updated: 27 August 2018)

General Information

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

www.vmi.lt, please follow the links:

Treaties for the avoidance of double taxation concluded by Lithuania

Republic of Lithuania Law on the Ratification of the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (MLI in EN)

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

State Tax Inspectorate under the Ministry of Finance of the Republic of Lithuania

Address: Vasario 16-osios str. 14, 01514 Vilnius, Lithuania

E-mail: vmi@vmi.lt, www.vmi.lt

Contact person for questions related to MAP is:

Ms Vaide Riskute, Head of Permanent working group for handling Mutual Agreement Procedures

State Tax Inspectorate under the Ministry of Finance of the Republic of Lithuania

Address: Vasario 16-osios str. 14, 01514 Vilnius, Lithuania

Tel. +370 5 2687 847, e-mail: Vaide.Riskute@vmi.lt

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

State Tax Inspectorate under the Ministry of Finance of the Republic of Lithuania

Contact person for questions related to APA is Ms Vaide Riskute, Head of Permanent working group for handling Advance Pricing Arrangements (contact details are provided above).

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	However, if some important issues have been raised during MAP, separate general explanations / consultations may be issued comprising a part of the Consulting Material Catalogue Database.	Consulting Material Catalogue Database can be found at: https://www.vmi.lt/cms/web/kmdb
2.	Are bilateral APA programmes implemented? If yes:	Yes	-	-
a.	<ul style="list-style-type: none"> Are roll-back of APAs provided for in the bilateral APA programmes? 	No	-	-
b.	<ul style="list-style-type: none"> Are there specific timeline for the filing of an APA request? 	Yes	An APA request may be submitted only in respect of a future transaction or an operation to be carried out after the request is submitted (if the contract concerning the operation is concluded before submitting the request).	The Rules for the Submission of a Taxpayer's Request to Consent to the Principles of Pricing of a Future Controlled Transaction (in English)
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? 	See detailed explanation	The Rules for the Submission of a Taxpayer's Request to Consent to the Principles of Pricing of a Future Controlled Transaction, Adoption and Amendment of the Decision Obligating the Tax Administrator, adopted by 21 October 2011 order of Head of State Tax Inspectorate under Ministry of Finance No. VA-106, which regulate unilateral APA (including specific information and documentation) is	<u>The Rules for the Submission of a Taxpayer's Request to Consent to the Principles of Pricing of a Future Controlled Transaction</u> (in English)

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			publicly available. Regarding bilateral APA these Rules apply to the extent they do not conflict with double taxation agreements and other international legal acts. Therefore, the Rules should be applied in bilateral APA process in conjunction with OECD documents that cover the subject.	
d.	<ul style="list-style-type: none"> Are there any fees charged to taxpayers for a bilateral APA request? 	No	-	-
e.	<ul style="list-style-type: none"> Are statistics relating to bilateral APAs publicly available? 	See detailed explanation	No bilateral APA has been concluded yet.	Statistics on APAs: JTPF website
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	Internal trainings and international events (workshops).	-
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	No restrictions apply.	The Rules for the Initiation and Execution of the Mutual Agreement Procedure (in English)
6.	Are issues relating to the application of treaty anti-abuse provision covered within the scope of MAP?	Yes	No restrictions apply.	The Rules for the Initiation and Execution of the Mutual Agreement Procedure (in English)
7.	Are issues relating to the application of domestic anti-abuse provision covered within the scope of MAP?	Yes	No restrictions apply.	The Rules for the Initiation and Execution of the Mutual Agreement Procedure (in English)
8.	Are issues where there is already an audit settlement between the tax authority and the taxpayer covered within the scope of MAP?	See detailed explanation	There is no audit settlement in Lithuania. However, there is an administrative dispute settlement/resolution process independent from the audit and examination functions, which, can be accessed through a request by the taxpayer and only in cases when neither party, i.e. neither the taxpayer, nor the tax administrator, has sufficient evidences to substantiate their calculations. In such cases if the agreement has been reached between the taxpayer and the tax administrator regarding the same issue in the dispute, the taxpayer loses the right to challenge the correctness of the calculation of the tax, and the tax administrator – to calculate a larger amount than the one specified in the agreement.	The Rules for the Initiation and Execution of the Mutual Agreement Procedure (in English)

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			However, if a taxpayer submits two requests (i.e. the request for MAP initiation and the request for the settlement procedure) at the same time, then the MAP request would be handled and the settlement procedure would not be started.	
9.	Are double taxation cases resulting from bona fide taxpayer initiated foreign adjustments covered within the scope of MAP?	Yes	-	<u>The Rules for the Initiation and Execution of the Mutual Agreement Procedure</u> (in English)
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	Under paragraph 2 of Article 156 of the Law of Tax Administration any request for MAP suspends the domestic tax dispute procedure in the pre-trial stage. In trial stage the decision on the suspension of the examination of a tax dispute shall be adopted by the discretion of the court in accordance with the law provisions.	<u>The Rules for the Initiation and Execution of the Mutual Agreement Procedure</u> (in English) <u>Law on Tax Administration of the Republic of Lithuania</u> (in English)
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 final and binding decision of judicial bodies does not preclude a taxpayer from access to MAP. However, in such cases the Lithuanian Competent Authority cooperates with a competent authority of another state following the mandatory conclusions of the final and binding decision of the judicial bodies.	<u>The Rules for the Initiation and Execution of the Mutual Agreement Procedure</u> (in English) <u>Law on Tax Administration of the Republic of Lithuania</u> (in English)

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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	-	The Rules for the Initiation and Execution of the Mutual Agreement Procedure (in English)
14.	Are there specific timeline for the filing of a MAP request?	Yes	<p>The timeline for filling a MAP request is set out in the relevant Article of the particular Treaties for the avoidance of double taxation or in the Convention on the elimination of double taxation in connection with the adjustment of profits of associated enterprises (90/436/EEC).</p> <p>In most of the Treaties the timeline for filling a MAP request is 3 years from the date of receipt of the notification of the calculation of taxes that resulted in or which could result in double taxation (the shorter term of 2 years is embedded in the Treaty with Canada, however, the Treaty will be amended through MLI, and there is no specific time limit included in the Treaty with UK).</p>	Treaties for the avoidance of double taxation concluded by Lithuania Ratified MLI (EN)
15.	Are guidance on multilateral MAPs publicly available?	See detailed explanation	There is no specific guidance on multilateral MAP available, however, some provisions relevant for the process are enshrined in the MAP Rules.	The Rules for the Initiation and Execution of the Mutual Agreement Procedure (in English)
16.	Are tax collection procedures suspended during the period a MAP case is pending?	Yes	Under Article 110 of the Law on Tax Administration enforced recovery of tax arrears (i.e. additionally calculated tax, related late payment interests and penalties) is suspended during the MAP.	The Rules for the Initiation and Execution of the Mutual Agreement Procedure (in English)

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				<u>Law on Tax Administration of the Republic of Lithuania</u> (in English)
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
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	Timeframes for the steps when the MAP request is received are explicitly provided in the MAP Rules. Provisions of the MAP Rules are based on OECD Manual on Effective Mutual Agreement Procedures and the Code of Conduct for the effective implementation of the Convention on the elimination of double taxation.	The Rules for the Initiation and Execution of the Mutual Agreement Procedure (in English)
20.	Are statistics relating to the time taken to resolve MAP cases publicly available?	Yes	-	Statistics on MAPs: JTPF website OECD website (2016)
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	Treatment of interests depends on the request of the taxpayer and on the agreement of Competent Authorities to take them into account during MAP. In case Competent Authorities do not agree interests to be a part of MAP, taxpayer may be exempted from them through domestic exemption procedure. Penalties are usually not covered by MAP as they are handled according to the domestic legislation (if taxpayer fulfils requirements, he may be exempted from the penalties).	The Rules for the Initiation and Execution of the Mutual Agreement Procedure (in English) Law on Tax Administration of the Republic of Lithuania (in English)
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	-	-

s/n		Response	Detailed explanation	Where publicly available information and guidance can be found
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	Currently arbitration is available only under Lithuania's tax treaty with The Kingdom of the Netherlands. Also Lithuania is a party to the EU Arbitration Convention on the elimination of double taxation in connection with the adjustment of profits of associated enterprises offering binding arbitration to resolve disputes relating to the transfer pricing among the Member States of the European Union.	<u>Treaties for the avoidance of double taxation concluded by Lithuania</u>
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.	Is the explanation of the relationship between the MAP and domestic law administrative and judicial remedies publicly available? If yes:	Yes	-	<u>The Rules for the Initiation and Execution of the Mutual Agreement Procedure</u> (in English) <u>Law on Tax Administration of the Republic of Lithuania</u> (in English)
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 	Yes	The final and binding decision of judicial bodies does not preclude a taxpayer from access to MAP. However, in such cases, if the domestic legal proceedings cannot be renewed, the Lithuanian Competent Authority cooperates with a competent authority of another state following the	<u>The Rules for the Initiation and Execution of the Mutual Agreement Procedure</u> (in English)

s/n		Response	Detailed explanation	Where publicly available information and guidance can be found
	domestic court decision as a matter of administrative policy or practice?		mandatory conclusions of the final and binding decision of the judicial bodies.	
25.	Are taxpayers allowed to request for multi-year resolution through the MAP of recurring issues with respect to filed tax years?	Yes	However, Competent Authority may undertake certain actions in order to ascertain that situation remained the same (control procedures or other forms of actions may be invoked).	Law on Tax Administration of the Republic of Lithuania (in English)
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)?	See detailed explanation	There is no such provision in the treaties with Czech Republic and Germany. In these cases double taxation would be resolved through mutual agreement procedures.	Treaties for the avoidance of double taxation concluded by Lithuania Ratified MLI (EN)
27.	Is there any other information available on resolution of MAP cases?	No	-	-

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	<p>General domestic provisions would apply.</p> <p>If the mutual agreement procedure was initiated after the tax audit carried out by Lithuanian tax administrator, in order to implement an agreement reached, when the foreign competent authority is responsible for the elimination of double taxation, a taxpayer has to pay the tax regarding which the competent authorities have agreed in accordance with the Law on Tax Administration, if such the liability exists.</p>	<p><u>The Rules for the Initiation and Execution of the Mutual Agreement Procedure</u> (in English)</p> <p><u>Law on Tax Administration of the Republic of Lithuania</u> (in English)</p>
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	<p>General domestic provisions would apply.</p> <p>In order to implement the agreement reached, when the agreement obliges the competent authority of Lithuania to exempt a taxpayer from double taxation, the taxpayer has not later than within 60 days from the receipt of the information about the agreement reached during the mutual agreement procedure or within the deadline pointed out by the tax administrator, taking into account the results of the agreement reached, to submit or correct the tax return(-s) of the relevant time period, despite statute limitation rules.</p> <p>After the revision the tax return submitted or corrected is released through the Electronic declaration system (EDS) all data of the tax liabilities would automatically go into Tax Accounting System where automatic set-offs are carried out every day. In case the taxpayer wishes to recover (set-off) the excess amount of tax, the taxpayer has to submit a completed form FR0781. Such the</p>	<p><u>The Rules for the Initiation and Execution of the Mutual Agreement Procedure</u> (in English)</p> <p><u>Law on Tax Administration of the Republic of Lithuania</u> (in English)</p>

s/n		Response	Detailed explanation	Where publicly available information and guidance can be found
			application will be handled under the general procedure (according to the Article 87(7) (1) of the Law on Tax Administration general term for handling the request is 30 days).	
30.	Are all mutual agreements reached through MAP implemented notwithstanding any time limits in your domestic law?	See detailed explanation	<p>Not all Tax Treaties have such provision. However, Lithuania did not make any reservation in MLI regarding the provision.</p> <p>Moreover, regarding national legislation, if all requirements for the submission of the request had been satisfied, the agreement was reached in the MAP and all other conditions for implementation had been fulfilled (e.g. taxpayer consented to the agreement, provided corrected tax returns etc.), then ordinarily there should be no obstacle to implement the agreement reached due to the time limitation clause.</p>	<p><u>The Rules for the Initiation and Execution of the Mutual Agreement Procedure</u> (in English)</p> <p><u>Treaties for the avoidance of double taxation concluded by Lithuania</u></p> <p><u>Ratified MLI (EN)</u></p>
31.	Is there any other information available on the implementation of MAP agreements?	No	-	-