

Malta Dispute Resolution Profile
(Last updated: 05 September 2019)

General Information

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

<http://justiceservices.gov.mt/LOM.aspx?pageid=27&mode=chrono&gotoID=123>

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

Aldo Farrugia, (Competent Authority)
Director General, Legal and International
International Tax Unit, MFSA
Notabile Road
Attard BKR 3000
Malta
ca-eoi.ird@gov.mt
+356 2548 5189

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

As above.

Malta 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?	See detailed explanation	Competent authority agreements may be published on the website of the Commissioner for Revenue if they are of a general nature or if they concern agreements that regard a category of taxpayers provided that there is agreement with the other Competent Authority. The outcome of a mutual agreement procedure for individual cases is not published.	https://cfr.gov.mt/en/inlandrevenue/itu/Documents/MAP%20Guidelines.pdf
2.	Are bilateral APA programmes implemented? If yes:	See detailed explanation	There is no formal APA programme established under Maltese tax law. However the provisions of article 52 of the Income Tax Act that provide for Advance Revenue Rulings are wide enough in scope to permit an APA.	-
a.	<ul style="list-style-type: none"> Are roll-back of APAs provided for in the bilateral APA programmes? 	No	The provisions of article 52 of the Income Tax Act that provide for Advance Revenue Rulings permit roll-back to be part of rulings issued thereunder.	-
b.	<ul style="list-style-type: none"> Are there specific timeline for the filing of an APA request? 	No	The application should ideally be made before the start of the first chargeable period to be covered by the APA.	-
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? 	No	-	-

Malta Dispute Resolution Profile – Preventing Disputes

s/n		Response	Detailed explanation	Where publicly available information and guidance can be found
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? 	No	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	Formal training is not provided. However, tax inspectors can request training related to interpretation and application of tax treaties on an ad hoc basis. Furthermore, when there is a question of interpreting tax treaties the International Tax Unit at the Inland Revenue Department is involved to give guidance.	-
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.

Malta 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	All Malta's 74 tax treaties have a 'Mutual Agreement Procedure' article. Of these treaties, 7 do not have an Article 9(2) equivalent.	-
6.	Are issues relating to the application of treaty anti-abuse provision covered within the scope of MAP?	Yes	-	https://cfr.gov.mt/en/inlandrevenue/itu/Documents/MAP%20Guidelines.pdf
7.	Are issues relating to the application of domestic anti-abuse provision covered within the scope of MAP?	Yes	-	https://cfr.gov.mt/en/inlandrevenue/itu/Documents/MAP%20Guidelines.pdf
8.	Are issues where there is already an audit settlement between the tax authority and the taxpayer covered within the scope of MAP?	Yes	-	https://cfr.gov.mt/en/inlandrevenue/itu/Documents/MAP%20Guidelines.pdf
9.	Are double taxation cases resulting from bona fide taxpayer initiated foreign adjustments covered within the scope of MAP?	Yes	-	https://cfr.gov.mt/en/inlandrevenue/itu/Documents/MAP%20Guidelines.pdf
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	Yes	The competent authority acknowledges, however, that a MAP request may be conditional upon the taxpayer having	https://cfr.gov.mt/en/inlandrevenue/itu/Documents/MAP%20Guidelines.pdf

Malta Dispute Resolution Profile – Availability and access to MAP

s/n		Response	Detailed explanation	Where publicly available information and guidance can be found
	remedies provided by the domestic law of your jurisdiction?		put in abeyance, exhausted, or rescinded its domestic objection, review and appeal rights.	
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	<p>It is important to note, however, that where the request for a MAP was prompted by action taken by the Commissioner for Revenue under the Income Tax Acts, the Malta Competent Authority cannot derogate in the MAP from an assessment that has become final and conclusive in accordance with the provisions of Article 38 of the Income Tax Management Act. Such cases involve instances where –</p> <ul style="list-style-type: none"> • no valid objection or appeal has been lodged within the time limit provided by the Income Tax Management Act against an assessment as regards the amount of the chargeable income assessed; • the amount of the chargeable income has been agreed to under article 33(4) of the Income Tax Management Act; • an appeal has been withdrawn or discontinued; • the amount of the chargeable income has been determined on objection or appeal. 	https://cfr.gov.mt/en/inlandrevenue/itu/Documents/MAP%20Guidelines.pdf
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	-	https://cfr.gov.mt/en/inlandrevenue/itu/Documents/MAP%20Guidelines.pdf

Malta Dispute Resolution Profile – Availability and access to MAP

s/n		Response	Detailed explanation	Where publicly available information and guidance can be found
14.	Are there specific timelines for the filing of a MAP request?	Yes	A taxpayer must notify the Competent Authority within the time limits, if any, specified in the applicable tax convention. 68 out of Malta's 74 treaties provide for a timeline of 3 years from the first notification for the taxpayer to present the request. In the case of two treaties the text provides that the case must be presented within 2 years from the first notification of the action resulting in taxation not in accordance with the provisions of the treaty. In the case of the other four treaties the text does not provide for a specific timeline for the filing of a MAP request.	-
15.	Are guidance on multilateral MAPs publicly available?	No	Malta follows OECD guidelines on multilateral MAPs.	-
16.	Are tax collection procedures suspended during the period a MAP case is pending?	Yes	-	https://cfr.gov.mt/en/inlandrevenue/itu/Documents/MAP%20Guidelines.pdf
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	Penalties are not dealt with in MAP.	-

Malta 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	-	https://cfr.gov.mt/en/inlandrevenue/itu/Documents/MAP%20Guidelines.pdf
20.	Are statistics relating to the time taken to resolve MAP cases publicly available?	No	-	-
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	-	https://cfr.gov.mt/en/inlandrevenue/itu/Documents/MAP%20Guidelines.pdf
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	The Inland Revenue Department does not have a special MAP office as there are only 0-3 MAP cases each year.	-
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	Malta has 3 tax treaties with an arbitration article and is a signatory to the EU Arbitration Convention.	-
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	-	-
b.	<ul style="list-style-type: none"> Does your treaty policy allow you to include MAP arbitration in your tax treaties? 	Yes	-	-

Malta Dispute Resolution Profile – Resolution of MAP cases

s/n		Response	Detailed explanation	Where publicly available information and guidance can be found
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	-	https://cfr.gov.mt/en/inlandrevenue/itu/Documents/MAP%20Guidelines.pdf
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	-	https://cfr.gov.mt/en/inlandrevenue/itu/Documents/MAP%20Guidelines.pdf
25.	<p>Are taxpayers allowed to request for multi-year resolution through the MAP of recurring issues with respect to filed tax years?</p>	Yes	-	-
26.	<p>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)?</p>	No	<p>Malta's tax treaty policy is to incorporate the equivalent of article 9(2) OECD Model Tax Convention in all its double tax conventions. Of Malta's 74 tax treaties, 7 do not have an Article 9(2) equivalent.</p> <p>However, even in the absence equivalent of article 9(2) OECD Model Convention, Malta believes that corresponding adjustments should be possible following the application of the mutual agreement procedure of article 25 OECD Model Tax Convention.</p>	-
27.	<p>Is there any other information available on resolution of MAP cases?</p>	No	-	-

Malta 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?	See detailed explanation	The MAP guidelines provide that any such agreement reached will be implemented without delay.	https://cfr.gov.mt/en/inlandrevenue/itu/Documents/MAP%20Guidelines.pdf
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?	See detailed explanation	The MAP guidelines provide that any such agreement reached will be implemented without delay.	https://cfr.gov.mt/en/inlandrevenue/itu/Documents/MAP%20Guidelines.pdf
30.	Are all mutual agreements reached through MAP implemented notwithstanding any time limits in your domestic law?	Yes	Provisions of Malta's tax treaties supersede domestic legislation, therefore mutual agreements reached through MAP will be implemented notwithstanding any time limits in Malta's domestic laws.	-
31.	Is there any other information available on the implementation of MAP agreements?	No	-	-