

Romania Dispute Resolution Profile

(Last updated: 12 December 2018)

General Information

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

https://static.anaf.ro/static/10/Anaf/AsistentaContribuabili_r/Conventii/Conventii.htm

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

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Directorate for Transfer Pricing and Tax Treaties
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- **APA request should be made to:**

Same as above.

Romania 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	Currently, the agreements reached by our competent authority are covered by confidentiality and fiscal secrecy provisions and cannot be published.	-
2.	Are bilateral APA programmes implemented? If yes:	Yes	<p>Unilateral, bilateral and multilateral APAs can be issued.</p> <p>Bilateral or multilateral APAs are issued only for transactions with taxpayers, residents of the countries that have concluded double taxation agreements with Romania, under the provisions of the Mutual Agreement Procedure article.</p> <p>The domestic legislations allowing the issuing of the APAs is Law no. 207/2015 regarding the Code of Fiscal Procedure, with subsequent amendments (art. 52) and Order of the President of the Romanian Tax Administration no. 3735/2015 regarding the approval for issuing or modifying an APA, as well as the content of the application for issuing or modifying an APA.</p>	<p>www.anaf.ro</p> <p>https://static.anaf.ro/static/10/Anaf/cod_procedu ra/Cod_Procedura_Fiscala_cu_norme_2016.htm#_RefHeading_3175_1651101228</p> <p>https://static.anaf.ro/static/10/Anaf/legislatie/OPANAF_3735_2015.pdf</p>

Romania Dispute Resolution Profile – Preventing Disputes

s/n		Response	Detailed explanation	Where publicly available information and guidance can be found
a.	<ul style="list-style-type: none"> Are roll-back of APAs provided for in the bilateral APA programmes? 	No	Currently, the Romanian legislation is not allowing roll-back for APAs issued.	-
b.	<ul style="list-style-type: none"> Are there specific timeline for the filing of an APA request? 	No	APAs have effect only for future transactions, starting with the fiscal year which follows the year when the transaction was concluded.	-
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? 	Yes	<p>Law no. 207/2015 regarding the Code of Fiscal Procedure, with subsequent amendments;</p> <p>Order of the President of the Romanian Tax Administration no. 3735/2015 regarding the approval for 228 issuing or modifying an APA, as well as the content of the application for issuing or modifying an APA.</p>	<p>www.anaf.ro https://static.anaf.ro/static/10/Anaf/cod_procedura/Cod_Procedura_Fiscala_cu_norme_2016.htm#RefHeading_3175_1651101228 https://static.anaf.ro/static/10/Anaf/legislatie/OPANAF_3735_2015.pdf</p>
d.	<ul style="list-style-type: none"> Are there any fees charged to taxpayers for a bilateral APA request? 	Yes	<p>The fees charged, either for unilateral multilateral APAs are as follows:</p> <p>a) 20.000 Euro for issuing an APA and 15.000 Euro for modifying it, in case of large taxpayers.</p> <p>b) 10.000 Euro for issuing an APA and 6.000 Euro for modifying it, in case of small and medium size taxpayers.</p> <p>Also, if the consolidated value of transactions covered in APA exceeds the equivalent of 4.000.000 Euro or if the taxpayer is classified as "large taxpayer" within the period of validity covered in APA, the issuing fee becomes 20.000 Euro.</p>	<p>www.anaf.ro https://static.anaf.ro/static/10/Anaf/cod_procedura/Cod_Procedura_Fiscala_cu_norme_2016.htm#RefHeading_3175_1651101228</p>

Romania Dispute Resolution Profile – Preventing Disputes

s/n		Response	Detailed explanation	Where publicly available information and guidance can be found
			These provisions are set out in art. 52, of Law no. 207/2015 regarding the Code of Fiscal Procedure, with subsequent amendments.	
e.	<ul style="list-style-type: none"> Are statistics relating to bilateral APAs publicly available? 	No	<p>Statistics, both on unilateral or bilateral/multilateral APAs are provided to the European Commission which makes the information publicly available.</p> <p>At national level, statistics are usually made available as part of tax administration press releases.</p>	http://ec.europa.eu/taxation_customs/business/company-tax/transfer-pricing-eu-context/joint-transfer-pricing-forum_en
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	Trainings in this area are normally provided as part of annual training programmes performed at the level of the tax administration.	-
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.

Romania 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	For the European Union Member States, the legal framework for transfer pricing MAP cases is covered, in most of the cases but not exclusively, by the Arbitration Convention (Convention 90/436/EEC on the elimination of double taxation in connection with the adjustment of profits of associated enterprises). For transfer pricing MAP cases with non EU-countries, the MAP provisions contained in the double taxation agreements concluded by Romania with other countries may apply. However, it should be noted that none of the double taxation agreements concluded by Romania allow arbitration procedures, except for the transfer pricing MAP cases initiated with EU countries, under the Arbitration Convention.	-
6.	Are issues relating to the application of treaty anti-abuse provision covered within the scope of MAP?	No	-	-
7.	Are issues relating to the application of domestic anti-abuse provision covered within the scope of MAP?	No	-	-
8.	Are issues where there is already an audit settlement between the tax authority and the taxpayer covered within the scope of MAP?	No	-	-

Romania Dispute Resolution Profile – Availability and access to MAP

s/n		Response	Detailed explanation	Where publicly available information and guidance can be found
9.	Are double taxation cases resulting from bona fide taxpayer initiated foreign adjustments covered within the scope of MAP?	No	-	-
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	It should be pointed out that Romania is a jurisdiction where court legal decisions are binding and enforceable for the tax administration.	-
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?	See detailed explanation	Analysis to be performed on a case by case basis. The above explanation should be taken into account. However, the analysis is performed on a case by case basis, depending on the court decision.	-
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	No	MAP guidelines and procedures will be drafted in the near future. Currently, both taxpayers and the tax administration follow both OECD Manual on Effective Mutual Agreement Procedures (MEMAP) recommendations as well as the	-

Romania Dispute Resolution Profile – Availability and access to MAP

s/n		Response	Detailed explanation	Where publicly available information and guidance can be found
	taxpayer's request for MAP assistance, publicly available?		provision of the Arbitration Convention for EU transfer pricing MAP cases.	
14.	Are there specific timeline for the filing of a MAP request?	Yes	<p>For EU transfer pricing MAP cases initiated under the Arbitration Convention provisions, a MAP request may be submitted within 3 years "of the first notification of the action which result or is likely to result in double taxation" - article 3 of Arbitration Convention.</p> <p>However, no specific timeline for the filing of a MAP request is explicitly foreseen in the double taxation agreements conclude so far by Romania. MEMAP recommendations are taken into account but they are not binding.</p>	-
15.	Are guidance on multilateral MAPs publicly available?	No	-	-
16.	Are tax collection procedures suspended during the period a MAP case is pending?	Yes	<p>The general rule applies only for EU Member States and stipulates that "<i>If the competent authorities of the requesting Member State or the requested Member State have initiated a mutual agreement procedure and outcome of the procedure may affect the claim in respect of which the assistance is requested, the recovery measures are suspended or blocked until the close of those proceedings, with except in cases of fraud or insolvency due to immediate emergency</i>".</p>	-
17.	Are there any fees charged to	No	-	-

Romania Dispute Resolution Profile – Availability and access to MAP

s/n		Response	Detailed explanation	Where publicly available information and guidance can be found
	taxpayers for a MAP request?			
18.	Is there any other information available on availability and access to MAP?	No	-	-

Romania 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?	No	MAP guidelines and procedures will be drafted in the near future. Currently, both taxpayers and the tax administration follow both OECD Manual on Effective Mutual Agreement Procedures (MEMAP) recommendations as well as the provision of the Arbitration Convention for EU transfer pricing MAP cases.	-
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?	No	-	-
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	-	-
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	None of the double taxation agreements concluded by Romania allow for arbitration procedures to be initiated by the taxpayers, except for the transfer pricing MAP cases initiated with EU countries, under the Arbitration Convention provisions.	-
a.	<ul style="list-style-type: none"> Are there any legal limitations in your domestic law (for example in 	No	-	-

Romania Dispute Resolution Profile – Resolution of MAP cases

s/n		Response	Detailed explanation	Where publicly available information and guidance can be found
	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? 	No	-	-
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	-	-
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? 	No	-	-
25.	Are taxpayers allowed to request for multi-year resolution through the MAP of recurring issues with respect to filed tax years?	No	-	-
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	No	-	-

Romania Dispute Resolution Profile – Resolution of MAP cases

s/n		Response	Detailed explanation	Where publicly available information and guidance can be found
	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)?			
27.	Is there any other information available on resolution of MAP cases?	No	-	-

Romania 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?	Yes	<p>The general provisions of the domestic legislation may apply, that is:</p> <ul style="list-style-type: none"> - Law no. 207/2015 regarding the Code of Fiscal Procedure, with subsequent amendments. Also, where the domestic statute of limitation rules cannot be complied with and the double taxation agreements explicitly stipulates that any agreement reached shall be implemented irrespective of the domestic statute of limitation rules, the provision of the double taxation agreement will prevail over national legislation. 	https://static.anaf.ro/static/10/Anaf/cod_procedura/Cod_Procedura_Fiscala_cu_norme_2_016.htm#_RefHeading_3175_1651101228
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?	Yes	<p>The general provisions of the domestic legislation may apply, that is:</p> <ul style="list-style-type: none"> - Law no. 207/2015 regarding the Code of Fiscal Procedure, with subsequent amendments. Also, where the domestic statute of limitation rules cannot be complied with and the double taxation agreements explicitly stipulates that any agreement reached shall be implemented irrespective of the domestic statute of limitation rules, the provision of the double taxation agreement will prevail over national legislation. 	https://static.anaf.ro/static/10/Anaf/cod_procedura/Cod_Procedura_Fiscala_cu_norme_2_016.htm#_RefHeading_3175_1651101228

Romania Dispute Resolution Profile – Implementation of MAP Agreements

s/n		Response	Detailed explanation	Where publicly available information and guidance can be found
30.	Are all mutual agreements reached through MAP implemented notwithstanding any time limits in your domestic law?	No	Where the domestic statute of limitation rules cannot be complied with and the double taxation agreements explicitly stipulates that any agreement reached shall be implemented irrespective of the domestic statute of limitation rules, the provision of the double taxation agreement will prevail over national legislation.	-
31.	Is there any other information available on the implementation of MAP agreements?	No		