

## Spain Dispute Resolution Profile

(Last updated: 22 February 2019)

### General Information

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

<http://www.minhap.gob.es/es-ES/Normativa%20y%20doctrina/Normativa/CDI/Paginas/CDI.aspx>

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

- **TP MAP (Attribution/allocation MAPs):**

Mr. Nestor Carmona, Head of the International Taxation Office  
Spanish Tax Agency (AEAT)

Address: Paseo de la Castellana 147, 4<sup>th</sup> Floor. 28046 Madrid

Tel: + 34 91 749 86 63 / Fax: + 34 91 749 86 85 / Email: [onfi.map@correo.aeat.es](mailto:onfi.map@correo.aeat.es)

- **Any other MAP:**

Ms. Elena de las Morenas Ferrándiz, Deputy Director General for International Taxation  
General Directorate for Taxation, Ministry of Finance

Address: C/ Alcalá 5 CP:28014 MADRID

Tel: +34 91 595 80 85 / Fax: +34 91 595 80 03 / Email: [fiscalidad.internacional@tributos.minhap.es](mailto:fiscalidad.internacional@tributos.minhap.es)

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

Mr. Nestor Carmona, Head of the International Taxation Office  
Spanish Tax Agency (AEAT)

Address: Paseo de la Castellana 147, 4<sup>th</sup> Floor. 28046 Madrid

Telephone: + 34 91 749 86 63/Fax: + 34 91 749 86 85 Email: [onfi@correo.aeat.es](mailto:onfi@correo.aeat.es)

s/n		Response	Detailed explanation	Where publicly available information and guidance can be found
<b>A. Preventing Disputes</b>				
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	This type of agreement is published at the Ministry of Finance's web page.	<a href="http://www.minhap.gob.es/es-ES/Normativa%20y%20doctrina/Normativa/CDI/Paginas/CDI.aspx">http://www.minhap.gob.es/es-ES/Normativa%20y%20doctrina/Normativa/CDI/Paginas/CDI.aspx</a>
2.	Are bilateral APA programmes implemented? If yes:	Yes	The possibility to request an APA was established in 1995, under Law 43/1995, of 27 December on Corporations Tax.	Art. 18.9 of Corporate Income Tax Law (Law 27/2014 of 27 November) and Chapter VII of Corporate Income Tax Regulations (CIT R), as drafted by Royal Decree 634/2015.
a.	<ul style="list-style-type: none"> <li>Are roll-back of APAs provided for in the bilateral APA programmes?</li> </ul>	Yes	The period of coverage may roll-back the years immediately preceding the period which the APA is signed if the domestic time limit has not expired and there has not been a firm tax assessment related to these years.	Art. 25.8 CIT R
b.	<ul style="list-style-type: none"> <li>Are there specific timeline for the filing of an APA request?</li> </ul>	See detailed explanation	The related persons or enterprises may make a request before the controlled transactions take place.	Art. 22 CIT R
c.	<ul style="list-style-type: none"> <li>Are rules, guidelines and procedures on how taxpayers can access and use bilateral APAs, including the specific information and documentation that should be</li> </ul>	Yes	The company may file a preliminary request, with the following contents: a) Identification of the parties. b) Brief description of the transactions.	Arts. 21 and 22 CIT R

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	submitted in a taxpayer's request for bilateral APA assistance, publicly available?		c) Basic elements of the intended pricing proposal. The request must be accompanied by a proposal that is consistent with the arm's length principle and contain a description of the method and the analysis followed to determine the market value. The request must be signed by the requesting persons. The request must be accompanied by the TP relevant documentation.	
d.	<ul style="list-style-type: none"> <li>Are there any fees charged to taxpayers for a bilateral APA request?</li> </ul>	No	-	-
e.	<ul style="list-style-type: none"> <li>Are statistics relating to bilateral APAs publicly available?</li> </ul>	Yes	EU yearly submitted statistics.	EU Joint Transfer Pricing Forum 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	Specialist courses are organised periodically covering the international taxation field. Attendants are the Tax Administration officials.	Not totally available to the public. <i>Instituto de Estudios Fiscales's</i> web page, periodically updated: <a href="http://www.ief.es/destacados/actividades_internacionales.aspx">http://www.ief.es/destacados/actividades_internacionales.aspx</a>

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4.	Is other information available on preventing tax treaty-related disputes?	Yes	In 2009 the Foro de Grandes Empresas (Forum on Large Companies) was established to study in conjunction with the Tax Agency, transfer pricing, among other issues. The Code of Best Tax Practices was elaborated within the framework of this Forum.	<a href="http://www.agenciatributaria.es/AEAT.internet/Inicio/Segmentos/Empresas_y_profesionales/Foro_Grandes_Empresas/Foro_Grandes_Empresas.shtml">http://www.agenciatributaria.es/AEAT.internet/Inicio/Segmentos/Empresas_y_profesionales/Foro_Grandes_Empresas/Foro_Grandes_Empresas.shtml</a>

**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>B. Availability and Access to MAP</b>				
5.	Are transfer pricing cases covered within the scope of MAP?	Yes	-	-
6.	Are issues relating to the application of treaty anti-abuse provision covered within the scope of MAP?	Yes	Provided that the competent authority considers it an informed request.	-
7.	Are issues relating to the application of domestic anti-abuse provision covered within the scope of MAP?	Yes	Provided that the competent authority considers it an informed request.	-
8.	Are issues where there is already an audit settlement between the tax authority and the taxpayer covered within the scope of MAP?	Yes	Provided that the competent authority considers it an informed request.	-
9.	Are double taxation cases resulting from bona fide taxpayer initiated foreign adjustments covered within the scope of MAP?	See detailed explanation	Bona fide taxpayers may address the Tax Administration to request the refund of any undue payment. If the Administration reacts provoking taxation not in accordance with the Convention the case is qualified to be dealt with under a MAP.	-
10.	Are there any other treaty related issues not covered under s/n 5 to 9 which are not within the scope of MAP?	See detailed explanation	The MAP may be rejected when dealing with internal law instead of a divergence in the application or interpretation of the Convention. It may be rejected as well if it becomes apparent that the taxpayer was intending to avoid taxation in any	Art. 8 MAP on Direct Tax Matters Regulation, approved by Royal Decree 1794/2008, 3rd November.

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			of the States involved.	
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	If both tracks have been activated, the judicial or administrative proceedings are suspended until the MAP is concluded.	21st Additional disposition of Act 58/2003, of 17 December, (General Tax Law) and 9th Additional disposition of Act 29/1998, of 13 <sup>th</sup> July, both modified by Act 34/2015.
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	<p>The Spanish Administration is bound by its Tribunal's Court decisions, so we would not adopt a different solution. In order to try to eliminate double taxation, we could only give an explanation to the other Competent Authority so that it may accept to do a corresponding adjustment unilaterally.</p> <p>On the other hand, the Spanish Administration is not bound by its Administrative Tribunal decisions, therefore MAP assistance can be provided.</p>	-
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 MAP on direct tax matters Regulation deals with access thereto and processing, including a detailed description of the minimum documentation to be attached to the request.	<a href="http://www.minhap.gob.es/Documentacion/Publico/NormativaDoctrina/Tributaria/Impuesto%20sobre%20la%20Renta%20de%20no%20Residentes/RD_1794-2008.pdf">http://www.minhap.gob.es/Documentacion/Publico/NormativaDoctrina/Tributaria/Impuesto%20sobre%20la%20Renta%20de%20no%20Residentes/RD_1794-2008.pdf</a>
14.	Are there specific timeline for the filing of a MAP request?	Yes	The MAPs Regulation determines the terms available for their request and error handling procedures.	Arts 5 and 7 MAP on direct tax matters Regulation, approved by Royal Decree

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				1794/2008, 3rd November.
15.	Are guidance on multilateral MAPs publicly available?	See detailed explanation	EU Arbitration Convention and its Code of Conduct.	-
16.	Are tax collection procedures suspended during the period a MAP case is pending?	Yes	MAPs' Regulations determines the suspension of the payment of the tax due and the conditions to qualify for it.	Arts 35 to 40 MAP on direct tax matters Regulation.
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	-	-

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<b>C. Resolution of MAP Cases</b>				
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	-	-
20.	Are statistics relating to the time taken to resolve MAP cases publicly available?	Yes	EU yearly submitted statistics.	-
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?	Yes	The <i>Oficina de Fiscalidad Internacional</i> (International Taxation Office- ONFI) was established under Order HAP/393/2013, of 11 March, modifying Order PRE/3581/2007, of 10th December, creating the different Departments of the State Tax Agency and their corresponding remits. Order of 2nd June 1994 further develops its structure. Under Order HAP/1431/2015, of 16th July the competencies on MAPs on transfer pricing and attribution of profits to EPs are specifically mandated to this Office.  Article 3 of Royal Decree 256/2012, of 27 <sup>th</sup> January	Regulations mentioned are publicly available.



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			develops the basic reporting structure of the Ministry of Finance and Public Administrations; thereby, the General Directorate for Taxes is vested with the powers to apply double tax conventions.	
23.	Is MAP arbitration a mechanism currently available for the resolution of tax treaty related disputes in any of your tax treaties?  If not:	See detailed explanation	Only in the Conventions to avoid double taxation with Swiss and UK.	<a href="http://www.minhap.gob.es/es-ES/Normativa%20y%20doctrina/Normativa/CDI/Paginas/CDI.aspx">http://www.minhap.gob.es/es-ES/Normativa%20y%20doctrina/Normativa/CDI/Paginas/CDI.aspx</a>
a.	<ul style="list-style-type: none"> <li>Are there any legal limitations in your domestic law (for example in your constitution) to include MAP arbitration in your tax treaties?</li> </ul>	-	-	-
b.	<ul style="list-style-type: none"> <li>Does your treaty policy allow you to include MAP arbitration in your tax treaties?</li> </ul>	-	-	-
24.	Is the explanation of the relationship between the MAP and domestic law administrative and judicial remedies publicly available?  If yes:	Yes	If the MAP track is followed in parallel to an administrative/judicial revision procedure, the latter is suspended until the MAP is concluded.	21st Additional disposition of Act 58/2003, of 17 December, (General Tax Law) and 9th Additional disposition of Act 29/1998, of 13th July, both modified by Act 34/2015.
a.	<ul style="list-style-type: none"> <li>Does the guidance specifically address whether the competent authority considers</li> </ul>	See detailed explanation	The competent authority is legally bound to follow a domestic court decision to comply with a	Art. 118 Spanish Constitution.

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	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?		constitutional requirement.	
25.	Are taxpayers allowed to request for multi-year resolution through the MAP of recurring issues with respect to filed tax years?	See detailed explanation	It would be analysed on a facts and circumstances basis. In some cases, as new point 7.3 i) in the EU Code of Conduct establishes, where a new request by an enterprise for a MAP is linked to issues which are already covered by an ongoing mutual agreement procedure with the same enterprise, competent authorities should, where appropriate, consider treating the new request together with the ongoing MAP.	-
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)?	No	<p>Tax treaties not including paragraph 2 of Article 9: Austria, Brazil, China, Ecuador, Finland, Hungary, Indonesia, Italy, Japan, Korea, Luxembourg, Mexico Morocco and Norway.</p> <p>Tax treaties not including Article 9: Belarus, Bulgaria, Kirgizstan, Tajikistan, Turkmenistan and Ukraine.</p>	<a href="http://www.minhap.gob.es/es-ES/Normativa%20y%20doctrina/Normativa/CDI/Paginas/CDI.aspx">http://www.minhap.gob.es/es-ES/Normativa%20y%20doctrina/Normativa/CDI/Paginas/CDI.aspx</a>

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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
<b>D. Implementation of MAP Agreements</b>				
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 general 6-month rule for the resolution of tax procedures applies.	Art 104 LGT
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	No	The mutual agreements reached are implemented irrespective of the time limits set in the domestic law only when the applicable treaty includes the last sentence of paragraph 2 of Article 25 of the	<a href="http://www.minhap.gob.es/es-ES/Normativa%20y%20doctrina/Normativa/CDI/Paginas/CDI.aspx">http://www.minhap.gob.es/es-ES/Normativa%20y%20doctrina/Normativa/CDI/Paginas/CDI.aspx</a>

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	law?		<p>OECD Model Tax Convention.</p> <p>Nowadays the treaties signed by Spain, not containing that sentence are: Austria, Belarus, Belgium, Brazil, Bulgaria, Chile, Czech Republic, Ecuador, Finland, Hungary, Indonesia, Ireland, Italy, Japan, Kirgizstan, Korea, Morocco, the Netherlands, Philippines, Poland, Romania, Slovakia, Tajikistan, Thailand, Tunisia, Turkmenistan and Ukraine.</p>	
31.	Is there any other information available on the implementation of MAP agreements?	Yes	-	Art. 15 MAP on direct tax matters Regulation, approved by Royal Decree 1794/2008.