

Belgium Dispute Resolution Profile

(Last updated: 2 September 2021)

General Information

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

<https://eservices.minfin.fgov.be/myminfin-web/pages/fisconet/document/3232bda5-33df-4fdd-b3b2-c7ada30b7da1> (English version)

<https://eservices.minfin.fgov.be/myminfin-web/pages/fisconet/document/27c5818d-7978-4749-a1ee-4f4816d3306d> (French version)

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

Federal Public Service Finance, Belgium
North Galaxy A24, Koning Albert II laan 33 bus 515, 1030 Brussel
Email: aagfisc.com.internat@minfin.fed.be

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

As above.

Belgium 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?	Yes	Agreements reached based on art. 25§3 of our treaties are published on our website. They can be found via “fisconetplus” next to the treaty and circular letters concerning the treaties in the column ‘divers’.	https://eservices.minfin.fgov.be/myminfin-web/pages/fisconet/document/3232bda5-33df-4fdd-b3b2-c7ada30b7da1
2.	Are bilateral APA programmes implemented? If yes:	Yes	On the basis of article 25§3 of the OECD Model Tax Convention.	http://finances.belgium.be/sites/default/files/downloads/126-procedure-amiable-apa-faq.pdf (French version) Mutual Agreement Procedure (MAP) (belgium.be) (English version)

Belgium 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? 	Yes	<p>In principle, an application for an APA should be submitted before the intended transactions take place. However, for practical reasons, we permit an APA to start on the 1st day of the financial year, even though transactions already took place between the first day of the financial year and the date of submission, on the understanding that the application is submitted at the latest on the last day of that financial year.</p> <p>When the relevant facts and circumstances are identical as those in previous tax years, the taxpayer can ask for a roll-back. In that case, the outcome of the APA could also be applied for the previous years.</p> <p>Roll-back can only be permitted if the applicable time limits (such as the tax assessment terms) allow this. For Belgium this means that roll-back can be applied provided that the relevant facts and circumstances of the previous years are identical <u>AND</u> the tax assessment terms for those years are not expired yet.</p>	<p>Mutual Agreement Procedure (MAP) (belgium.be)</p>
b.	<ul style="list-style-type: none"> Are there specific timeline for the filing of an APA request? 	See detailed explanation	<p>In principle, an application for an APA should be submitted before the intended transactions take place. However, for practical reasons, we permit an APA to start on the 1st day of the financial year, even though transactions already took place between the first day of the financial year and the date of submission, on the understanding that the application is submitted at the latest on the last day of that financial year.</p> <p>The subsequent request for a renewal of the APA must be filed at least 6 months before the expiration of the existing APA.</p>	<p>Mutual Agreement Procedure (MAP) (belgium.be)</p>

Belgium Dispute Resolution Profile – Preventing Disputes

s/n		Response	Detailed explanation	Where publicly available information and guidance can be found
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>A request for a bilateral or multilateral APA must always be submitted in writing (by registered letter, ordinary or electronic letter).</p> <p>In order to examine the request as soon as possible, the Belgian competent authority requests to add following documentation: identity of parties and description of the group, duration of the APA, description of the intercompany transactions, transfer pricing method, comparability study (if available), functional analysis, unilateral rulings concluded by the group (if any) and financial data of the concerned company,...</p> <p>When the request is submitted by a mandatary (other than a lawyer), the mandate must be attached.</p>	<p>Mutual Agreement Procedure (MAP) (belgium.be)</p>
d.	<ul style="list-style-type: none"> Are there any fees charged to taxpayers for a bilateral APA request? 	No	-	<p>Mutual Agreement Procedure (MAP) (belgium.be)</p>
e.	<ul style="list-style-type: none"> Are statistics relating to bilateral APAs publicly available? 	Yes	Every year in July, the number of new APA requests is published in the yearly report of the Federal Public Service Finance.	<p>http://www.2014.rapportannuel.finances.belgium.be/fr/chiffres/collaboration/niv_eau-international (click on 5.2.1)</p>
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?	See detailed explanation	<p>There is no general training on tax treaties issues but each time an action on income from abroad is planned, specific courses are organised for all auditors participating regarding the specific topics covered by the action. Information is available for all auditors involved on the intranet.</p> <p>For the transfer pricing auditors, several special courses on transfer pricing were organised in cooperation with the OECD.</p>	-

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s/n		Response	Detailed explanation	Where publicly available information and guidance can be found
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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.

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	<p>We provide access to MAP in cases where a transfer pricing dispute has arisen between a taxpayer and the Belgian or a foreign tax authority.</p> <p>As an EU member, and under the EU Arbitration Convention on Transfer Pricing, Belgium is also obliged to resolve any double taxation arising in an EU transfer pricing case.</p>	<p>-</p> <p>https://gcloudbelgium.sharepoint.com/sites/minfin-fisconet_public/fiscal-discipline/income-taxes/administrative-directives-and-comments/circular-letters/circular-letters-natural-persons-non-residents/1ec79a9a-28cd-40d9-9d52-cc6792b7d51c</p> <p>https://eservices.minfin.fgov.be/myminfin-web/pages/fisconet/document/d3cf8faa-ded4-44d0-bd5b-b638c30ee457 (for the French version of the circular)</p> <p>https://eservices.minfin.fgov.be/myminfin-web/pages/fisconet/document/78e7a318-5f00-4a08-ade2-cd4a9fbb92e (for the English version of the circular)</p>

s/n		Response	Detailed explanation	Where publicly available information and guidance can be found
6.	Are issues relating to the application of treaty anti-abuse provision covered within the scope of MAP?	Yes	The taxpayer has the right to present a case where a treaty-based anti-abuse rule has been applied. Even in the case where (one of) the principal purpose(s) of a transaction was to obtain treaty benefits, access to MAP is not denied.	https://eservices.minfin.fgov.be/myminfin-web/pages/fisconet/document/78e7a318-5f00-4a08-ade2-cd4a9fbbe92e
7.	Are issues relating to the application of domestic anti-abuse provision covered within the scope of MAP?	Yes	In cases where a domestic anti-abuse rule conflicts with a provision of the treaty, we provide access to MAP. Treaty provisions (MAP – art 25) override domestic law.	https://eservices.minfin.fgov.be/myminfin-web/pages/fisconet/document/78e7a318-5f00-4a08-ade2-cd4a9fbbe92e
8.	Are issues where there is already an audit settlement between the tax authority and the taxpayer covered within the scope of MAP?	Yes	An audit settlement is never an obstacle to the functioning of the MAP.	https://eservices.minfin.fgov.be/myminfin-web/pages/fisconet/document/78e7a318-5f00-4a08-ade2-cd4a9fbbe92e

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?	Yes	The double taxation cases that occur, at the event of a foreign adjustment initiated by a bona fide taxpayer, are covered within the scope of MAP.	https://eservices.minfin.fgov.be/myminfin-web/pages/fisconet/document/78e7a318-5f00-4a08-ade2-cd4a9fbb92e
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	Except when it concerns an unfounded or late claim (in the meaning of the provisions of article 25 of our treaties), the Belgian Tax Authority provides full access to MAP.	https://eservices.minfin.fgov.be/myminfin-web/pages/fisconet/document/78e7a318-5f00-4a08-ade2-cd4a9fbb92e
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	The MAP is available to taxpayers, irrespective of the judicial or administrative remedies available under our domestic law. The Mutual Agreement Procedure and the domestic remedies exist independently of each other, and can be launched in parallel at the same time.	Mutual Agreement Procedure (MAP) (belgium.be) https://eservices.minfin.fgov.be/myminfin-web/pages/fisconet/document/78e7a318-5f00-4a08-ade2-cd4a9fbb92e

s/n		Response	Detailed explanation	Where publicly available information and guidance can be found
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>Yes, in cases where an unfavourable administrative decision has been taken against the taxpayer.</p> <p>In cases where a judicial decision has become final and binding (when a Court decision acquires the force of “res judicata” and the decision can no longer be challenged), that decision cannot be overridden by a MAP agreement.</p>	<p>Mutual Agreement Procedure (MAP) (belgium.be)</p> <p>https://eservices.minfin.fgov.be/myminfin-web/pages/fisconet/document/78e7a318-5f00-4a08-ade2-cd4a9fbb92e</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?	See detailed explanation	<p>For most of the Treaties, a circular letter may be consulted via ‘Fisconet’. Those circulars describe in short lines the availability, the access and the operation of the procedure.</p> <p>In order to increase awareness of the MAP, taxpayers are also informed about the procedure through the assessment notice sent to them (+ contact info if further information is required).</p> <p>In addition, the Belgian Tax Authority has published a general, extensive and comprehensive circular on 7 March 2018. This circular contains a detailed and precise description of the procedure.</p> <p>In addition, a list of FAQ’s is published on the internet.</p>	<p>Mutual Agreement Procedure (MAP) (belgium.be)</p> <p>https://eservices.minfin.fgov.be/myminfin-web/pages/fisconet/document/78e7a318-5f00-4a08-ade2-cd4a9fbb92e</p> <p>https://eservices.minfin.fgov.be/myminfin-web/pages/fisconet/document/3232bda5-33df-4fdd-b3b2-c7ada30b7da1</p>

s/n		Response	Detailed explanation	Where publicly available information and guidance can be found
14.	Are there specific timeline for the filing of a MAP request?	No	Apart from the timeline provided in article 25 of the treaties, there is no other time-limit for the filing of a MAP request.	<p data-bbox="1608 316 2047 379">Mutual Agreement Procedure (MAP) (belgium.be)</p> <p data-bbox="1541 459 2114 561">https://eservices.minfin.fgov.be/myminfin-web/pages/fisconet/document/78e7a318-5f00-4a08-ade2-cd4a9fbb92e</p>
15.	Are guidance on multilateral MAPs publicly available?	No	There is no specific guidance for MAPs dealing with multi-jurisdictional tax disputes.	-
16.	Are tax collection procedures suspended during the period a MAP case is pending?	Yes	<p data-bbox="831 746 1503 954">As soon as a taxpayer has filed a MAP request, the Competent Authority notifies immediately the tax collection office. The taxpayer can request the suspension of the tax collection procedures during the period a MAP case is pending to the local tax collection office.</p> <p data-bbox="831 976 1503 1327">According to the Belgian internal legislation, the Advisor General of the Administration responsible for the collection and recovery of taxes (AAll) can in exceptional cases, postpone the recovery to the extent and under the conditions that he determines . Taking into account the structure of the tax administrations in Belgium it is important to stress that this officer and the Administration he represents, are independent of the Belgian competent authority responsible for the treatment of the Treaty procedures.</p>	<p data-bbox="1532 746 2114 912">http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=2012010903&table_name=loi (article 25§3 of the Law of 9 January 2012 transposing the Directive 2010/24/EU of 10 March 2010)</p> <p data-bbox="1608 944 2047 1008">Mutual Agreement Procedure (MAP) (belgium.be)</p> <p data-bbox="1541 1088 2114 1190">https://eservices.minfin.fgov.be/myminfin-web/pages/fisconet/document/78e7a318-5f00-4a08-ade2-cd4a9fbb92e</p>

s/n		Response	Detailed explanation	Where publicly available information and guidance can be found
17.	Are there any fees charged to taxpayers for a MAP request?	No	<p>The Taxpayer has the possibility to file a MAP request via e-mail (so the procedure is completely free).</p> <p>It is neither required that the taxpayer is assisted by a legal advisor or attorney, nor at the moment of the request, nor during the procedure.</p>	<p>Mutual Agreement Procedure (MAP) (belgium.be)</p> <p>https://eservices.minfin.fgov.be/myminfin-web/pages/fisconet/document/78e7a318-5f00-4a08-ade2-cd4a9fbb92e</p>
18.	Is there any other information available on availability and access to MAP?	See detailed explanation	Any other information on the availability and access to MAP can be consulted on the “Fisconet” website, the “FAQ’s” website and in the Circular letter published on 7 March 2018.	<p>https://eservices.minfin.fgov.be/myminfin-web/pages/fisconet/document/3232bda5-33df-4fdd-b3b2-c7ada30b7da1</p> <p>Mutual Agreement Procedure (MAP) (belgium.be)</p> <p>https://eservices.minfin.fgov.be/myminfin-web/pages/fisconet/document/78e7a318-5f00-4a08-ade2-cd4a9fbb92e</p>

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	The Model Timeframe based on the MEMAP adapted to the Minimum Standard requirements.	https://www.oecd.org/ctp/38061910.pdf
20.	Are statistics relating to the time taken to resolve MAP cases publicly available?	See detailed explanation	Statistics relating to the time taken to resolve MAP cases can be consulted on the websites of the OECD and the EU (clicking on Belgium in order to have the statistics).	http://www.oecd.org/ctp/dispute/map-statistics-2006-2014.htm https://ec.europa.eu/taxation_customs/business/company-tax/transfer-pricing-eu-context/joint-transfer-pricing-forum_en (click under Members, point 3) http://ec.europa.eu/taxation_customs/taxation/company_tax/transfer_pricing/forum/index_en.htm
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	In principle not, but they can sometimes be part of a deal made with the other CA.	https://eservices.minfin.fgov.be/myminfin-web/pages/fisconet/document/78e7a318-5f00-4a08-ade2-cd4a9fbbe92e

s/n		Response	Detailed explanation	Where publicly available information and guidance can be found
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.	<p>Is MAP arbitration a mechanism currently available for the resolution of tax treaty related disputes in any of your tax treaties?</p> <p>If not:</p>	Yes	<p>MAP arbitration is currently available in 3 Tax Treaties, namely the DTA Belgium – United Kingdom (art. 25, §5), the DTA Belgium – United States of America (art. 24, §7) and the DTA Belgium-Uruguay (art. 24§5).</p> <p>In the future, MAP arbitration will also be available in other treaties. The Belgian tax administration aims to integrate the MAP arbitration when concluding new treaties.</p> <p>A MAP arbitration provision is also included in article 24§6 of the Belgian Model Convention.</p>	<p>https://gcloudbelgium.sharepoint.com/sites/minfin-fisconet_public/fiscal-discipline/income-taxes/legislation-and-regulations/conventions-for-the-avoidance-of-double-taxation/in-operation/conventions-and-circular-letters/89c77443-f205-4669-bf5f-c50794b4a442</p> <p>https://gcloudbelgium.sharepoint.com/sites/minfin-fisconet_public/fiscal-discipline/income-taxes/legislation-and-regulations/conventions-for-the-avoidance-of-double-taxation/in-operation/conventions-and-circular-letters/8f72ac4d-59e7-4759-9908-f90410352cd4</p> <p>https://gcloudbelgium.sharepoint.com/sites/minfin-fisconet_public/fiscal-discipline/income-taxes/legislation-and-regulations/conventions-for-the-avoidance-of-double-taxation/belgian-draft/a37a9ad7-2257-4d48-9328-dc8d3bc4f8bd?lightning=a37a9ad7-2257-4d48-9328-dc8d3bc4f8bd/#findHighlighted</p> <p>https://eservices.minfin.fgov.be/myminfin-web/pages/fisconet/document/78e7a318-5f00-4a08-ade2-cd4a9fbbe92e</p>

s/n		Response	Detailed explanation	Where publicly available information and guidance can be found
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.	<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	This information can be found in the circular letter regarding article 25 that was published on 7/3/2018.	https://eservices.minfin.fgov.be/myminfin-web/pages/fisconet/document/78e7a318-5f00-4a08-ade2-cd4a9fbbe92e
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://eservices.minfin.fgov.be/myminfin-web/pages/fisconet/document/78e7a318-5f00-4a08-ade2-cd4a9fbbe92e

s/n		Response	Detailed explanation	Where publicly available information and guidance can be found
25.	Are taxpayers allowed to request for multi-year resolution through the MAP of recurring issues with respect to filed tax years?	Yes	<p>A taxpayer can request for multi-year resolution through the MAP of recurring issues.</p> <p>Some issues can be considered as recurring for example the presence/absence of a permanent establishment. Other issues on the other hand can't be considered as recurring. For example the division of a remuneration based on the number of days present in a State.</p>	-
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>Some treaties don't include such a provision. It concerns the following treaties: Austria, Bangladesh, Bosnia-Herz. (ex-Yug), Brazil, Bulgaria, Cyprus, Czech Republic, Denmark, Ecuador, Egypt, Gabon, Germany, Greece, Hungary, Ireland, India, Indonesia, Israel, Italy, Ivory Coast, Japan, Kazakhstan, Kirgizstan, Korea (South), Kosovo (ex-Yug), Luxembourg, Macedonia (ex- Yug), Malaysia, Malta, Mauritius, Mexico, Moldavia, Mongolia, New-Zealand, Norway, Pakistan, Portugal, Russia, Senegal, Serbia and Montenegro (ex-Yug), Slovenia, Slovakia, Sweden, Switzerland, Tadjikistan, Thailand, Turkmenistan, United Arab Emirates, Venezuela.</p> <p>The other treaties concluded by Belgium include that provision.</p>	<p>The tax treaties can be found on :</p> <p>https://eservices.minfin.fgov.be/myminfin-web/pages/fisconet/document/3232bda5-33df-4fdd-b3b2-c7ada30b7da1</p> <p>https://eservices.minfin.fgov.be/myminfin-web/pages/fisconet/document/78e7a318-5f00-4a08-ade2-cd4a9fbbe92e</p>

s/n		Response	Detailed explanation	Where publicly available information and guidance can be found
27.	Is there any other information available on resolution of MAP cases?	Yes	A circular letter is published on 7/3/2018 in this respect.	https://eservices.minfin.fgov.be/myminfin-web/pages/fisconet/document/78e7a318-5f00-4a08-ade2-cd4a9fbbe92e

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	A circular letter is published on 7/3/2018 in this respect.	https://eservices.minfin.fgov.be/myminfin-web/pages/fisconet/document/78e7a318-5f00-4a08-ade2-cd4a9fbb92e
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	Yes	A circular letter is published on 7/3/2018 in this respect.	https://eservices.minfin.fgov.be/myminfin-web/pages/fisconet/document/78e7a318-5f00-4a08-ade2-cd4a9fbb92e

s/n		Response	Detailed explanation	Where publicly available information and guidance can be found
	reached by the competent authority and/or for a refund of the tax paid?			
30.	Are all mutual agreements reached through MAP implemented notwithstanding any time limits in your domestic law?	Yes	Granting exemptions for past years can be done without any limitation of time. For establishing a supplemental tax, we can only go back for a limited time period, according to our internal legislation.	
31.	Is there any other information available on the implementation of MAP agreements?	Yes	A circular letter is published on 7/3/2018 in this respect.	https://eservices.minfin.fgov.be/myminfin-web/pages/fisconet/document/78e7a318-5f00-4a08-ade2-cd4a9fbbe92e