

Bermuda Dispute Resolution Profile

(Last updated: 11 October 2019)

General Information

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

<http://www.eoi-tax.org/jurisdictions/BM#agreements>

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

Wayne L. Brown ACII, CBII

Assistant Financial Secretary

Ministry of Finance, Bermuda

Email: wlbrown@gov.bm with cc to treaty@gov.bm

Telephone: office +14412955151 extension 1281 | Mobile +14415052780

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	Our tax treaties are bilateral and have a MAP Article which is binding on Bermuda and our tax treaty partners.	http://www.eoi-tax.org/jurisdictions/BM#agreements
2.	Are bilateral APA programmes implemented? If yes:	See detailed explanation	Our tax treaties are bilateral and have a MAP Article which is binding on Bermuda and our tax treaty partners.	-
a.	<ul style="list-style-type: none"> Are roll-back of APAs provided for in the bilateral APA programmes? 	-	-	-
b.	<ul style="list-style-type: none"> Are there specific timeline for the filing of an APA request? 	-	-	-
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	Our tax treaties are bilateral and have a MAP Article which is binding on Bermuda and our tax treaty partners which sets out that persons have the right to seek assistance from the competent authority.	http://www.eoi-tax.org/jurisdictions/BM#agreements
d.	<ul style="list-style-type: none"> Are there any fees charged to taxpayers for a bilateral APA request? 	-	-	-

s/n		Response	Detailed explanation	Where publicly available information and guidance can be found
e.	<ul style="list-style-type: none"> • Are statistics relating to bilateral APAs publicly available? 	-	-	-
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	Bermuda does not have income tax.	-
4.	Is other information available on preventing tax treaty-related disputes?	See detailed explanation	Our tax treaties are self-explanatory, given that no situations of double taxation should arise as Bermuda has no income tax. In disputes that do not involve double taxation they will be less complex and the aggrieved person will follow the text of the tax treaty when seeking our assistance.	-

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	Our tax treaties are bilateral and have a MAP Article which is binding on Bermuda and our tax treaty partners which sets out that persons have the right to seek assistance from the competent authority.	http://www.eoi-tax.org/jurisdictions/BM#agreements
6.	Are issues relating to the application of treaty anti-abuse provision covered within the scope of MAP?	Yes	Our tax treaties are bilateral and have a MAP Article which is binding on Bermuda and our tax treaty partners which sets out that persons have the right to seek assistance from the competent authority.	http://www.eoi-tax.org/jurisdictions/BM#agreements
7.	Are issues relating to the application of domestic anti-abuse provision covered within the scope of MAP?	-	Bermuda does not have income tax.	-
8.	Are issues where there is already an audit settlement between the tax authority and the taxpayer covered within the scope of MAP?	-	Bermuda does not have income tax.	-
9.	Are double taxation cases resulting from bona fide taxpayer initiated foreign adjustments covered within the scope of MAP?	See detailed explanation	Our tax treaties are bilateral and have a MAP Article which is binding on Bermuda and our tax treaty partners which sets out that persons have the right to seek assistance from the competent authority.	http://www.eoi-tax.org/jurisdictions/BM#agreements
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	There is no issue excluded from MAP.	-

s/n		Response	Detailed explanation	Where publicly available information and guidance can be found
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	There is no procedural regulation regarding the interaction between local remedies and MAP.	-
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?	No	The Competent Authority is not able to depart from judicial rulings.	-
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?	No	Bermuda competent authority will accept an application in whatever format it is made, based on the person has read the MAP Article in the tax treaty and is seeking assistance pursuant thereto.	-
14.	Are there specific timeline for the filing of a MAP request?	No	Bermuda competent authority will accept an application in whatever format it is made, based on the person has read the MAP Article in the tax treaty and is seeking assistance pursuant thereto.	-
15.	Are guidance on multilateral MAPs publicly available?	-	-	-
16.	Are tax collection procedures suspended during the period a MAP case is pending?	-	-	-
17.	Are there any fees charged to taxpayers for a MAP request?	No	-	-

s/n		Response	Detailed explanation	Where publicly available information and guidance can be found
18.	Is there any other information available on availability and access to MAP?	No	Bermuda competent authority will accept an application in whatever format it is made, based on the person has read the MAP Article in the tax treaty and is seeking assistance pursuant thereto.	http://www.eoi-tax.org/jurisdictions/BM#agreements

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	We will treat such matters as a priority if they arise. There have been no MAP cases.	-
20.	Are statistics relating to the time taken to resolve MAP cases publicly available?	-	-	-
21.	Is interest or penalties resulting from adjustments made pursuant to a MAP agreement waived or dealt with as part of the MAP procedure?	-	It depends on the principal tax obligation that is under review in the MAP which gives rise to the penalties and interest.	-
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 competent authority staff handle MAP, there is no stand-alone MAP office.	-
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	The Bermuda competent authority has no legal impediment to prevent agreeing to arbitration when that tax treaty has no arbitration provision.	-
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	MAP arbitration is expressly included in our tax treaty with Bahrain and the Netherlands. The Bermuda competent authority has no legal impediment to prevent agreeing to arbitration when that tax treaty has no arbitration provision.	-

s/n		Response	Detailed explanation	Where publicly available information and guidance can be found
b.	<ul style="list-style-type: none"> Does your treaty policy allow you to include MAP arbitration in your tax treaties? 	Yes	MAP arbitration is expressly included in our tax treaty with Bahrain and the Netherlands.	-
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	There is no procedural regulation regarding the interaction between local remedies and MAP. The Bermuda competent authority has no legal impediment to prevent agreeing to arbitration when that tax treaty has no arbitration provision.	-
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? 	-	-	-
25.	Are taxpayers allowed to request for multi-year resolution through the MAP of recurring issues with respect to filed tax years?	Yes	-	-
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)?	-	Bermuda has no income tax.	-

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?	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?	-	Bermuda has no income tax.	-
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?	-	Bermuda has no income tax.	-
30.	Are all mutual agreements reached through MAP implemented notwithstanding any time limits in your domestic law?	Yes	Tax treaties MAP have no time limit in Bermuda domestic law.	-
31.	Is there any other information available on the implementation of MAP agreements?	No	-	-