



## Mutual Agreement Procedure (MAP)

The Mutual Agreement Procedure (MAP) is a negotiating procedure between the competent authorities of jurisdictions, which are parties to a tax treaty. Its purpose is to solve disagreements concerning interpretation or application of the tax agreement and to eliminate situations in which the actions of a tax administration result or will result in taxation not in accordance with the relevant tax treaty.

### Situations where the procedure can be applied

A MAP request can be made when a person considers that the actions of the tax administration in one of the jurisdictions result or will result in taxation not in accordance with the relevant tax treaty. In order to avoid this the person may request the Competent Authority (CA) assistance under the MAP.

The taxpayer will have to approach the CA of its country of residence to request relief under a tax agreement. Where the adjustment will affect related parties in both jurisdictions, it is advisable for each taxpayer to make a separate request for assistance to the CA of the country in which it is resident.

Before submitting an MAP application, the individual or company should hold discussions with the CA to determine whether the issue can be resolved using the mutual agreement procedure. The Inspectorate of Taxes provides advice and guidance on selecting the right procedure.

**The legal framework for MAP is laid down in the tax agreements Curaçao has concluded which are available at:**

<https://verdragenbank.overheid.nl/nl>

### Acceptance into MAP

There are no administrative or statutory dispute resolution processes in Curaçao that limit access to MAP. The payment of tax due on any assessments raised or determinations made may be suspended on request of the taxpayers during normal appeals processes until the MAP is resolved. Taxpayers should check whether entering into statutory or administrative dispute resolution processes with other tax authorities would prevent bilateral MAP discussions and consider whether doing so is likely to increase the risk of double taxation.



The Curaçao' CA's intention is to:

- eliminate as early as possible taxation that is not in accordance with treaty provisions by initiating early consultations on a mutual agreement;
- process all requests for a mutual agreement or arbitration procedure. If there is any reason why a mutual agreement is not appropriate (see below), the CA will consult with the taxpayer to see whether there is any other way of resolving the issue;
- seek to complete the mutual agreement procedure within twenty-four months;
- seek to limit the costs involved in a mutual agreement procedure as far as possible (by, for example, deferral of payment of tax);
- ensure that the request and the mutual agreement procedure are handled as transparently as possible and to inform the taxpayer as soon as possible in case of any unexpected changes in the course of the procedure.

### **Rejection of MAP requests**

In cases where it appears to Curaçao that the taxpayer's MAP request may be inadmissible or not justified, Curaçao will write to the other CA setting out the reasons why Curaçao believes the request is invalid and invite the other CA to provide its views before deciding to reject the request.

### **How to make a MAP request**

In Curaçao there is no set form of presentation of the MAP request. It is required that sufficient information and documentation is provided to enable the CA to fully assess the request for MAP. Specific treaties, however, may state that certain information are necessary. It is therefore advisable to consult the relevant treaty and in case of doubt to contact the CA to seek for guidance on the information and documentation that needs to be provided.

### **Time limits for submitting a MAP request**

In order to invoke MAP under a tax treaty, it is required that a case must be presented within three years of the first notification of the action which results or is likely to result in double taxation.

### **Concluding the MAP process**

If the CA concludes that an action has led to taxation not in accordance with the treaty (and that the MAP request is admissible and justified) then the CA will first consider if the issue can be



resolved on a unilateral basis. In this case, the CA may grant relief, under the provisions of the treaty, without the need to enter into bilateral discussion with the other tax authority.

If Curaçao cannot resolve the issue unilaterally, then the CA will take up the matter with their counterpart in the treaty party state. If discussions between the CAs provide adequate evidence to satisfy the CA that an adjustment made by the other tax authority is in accordance with the tax treaty, say for example, it was required in order to comply with the arm's length principle, the Curaçao CA will grant a corresponding adjustment.

If the CAs can establish that the primary adjustment was excessive (a non-arm's length amount), they will agree a course whereby the primary adjustment is reduced and the remaining adjustment is relieved in an amount that reflects an arm's length result. If, however, Curaçao remains dissatisfied, there is no obligation on it to grant relief and, at the taxpayer's request, the matter may progress to arbitration provided that the relevant treaty contains an arbitration article.

As part of the MAP process, where an agreement is finalized between the relevant CAs, the taxpayer is notified in writing of the decision and is provided with an explanation of the result. Once the taxpayer has accepted the agreement, written confirmation of the agreement is exchanged between the administrations and provided to the taxpayer. The results are processed by the tax administrations and relief is obtained. If the taxpayer does not accept the agreement, then the MAP process will be deemed to be concluded and no adjustment will be implemented.

Where a solution or mutual agreement is reached under the terms of a tax treaty, it will be given effect despite anything in any enactment. Time limits for claiming relief under the tax provisions do not apply so that relevant claims can be made in conjunction with giving effect to the solution or mutual agreement. Relief may be granted either by discharge, repayment of tax, tax credit or by amended assessment.

**MAP request should be addressed to:**

Attn. Mrs. L.L. Rodriguez, LL.M.  
Acting Director of Fiscal Affairs  
Fiscal Affairs of the Ministry of Finance  
Address: Pietermaai 4/4A Willemstad, Curaçao  
E-mail: [lisa.rodriquez@gobiernu.cw](mailto:lisa.rodriquez@gobiernu.cw)

**MAP requests relating to the residence of taxpayers for corporate tiebreaker procedures** (cases where a person other than an individual is a resident of both Contracting States and the



Competent Authorities of the Contracting States shall determine by mutual agreement the Contracting State of which that person shall be deemed to be a resident for the purposes of the treaty) should be made to the Inspectorate of Taxes.

The above-mentioned corporate tiebreaker MAP requests and **Advance Pricing Agreements (APA)** requests should be addressed to:

Attn. Mrs. J. Isenia, LL.M.  
Inspector of Taxes  
Inspectorate of Taxes Curaçao  
Address: Regentesselaan z/n  
E-mail: jamila.isenia@gobiernu.cw

  
The Minister of Finance,