



Agenția Națională de Administrare Fiscală

MUTUAL AGREEMENT PROCEDURE GUIDE (MAP)

Resolution of tax disputes arising from the interpretation and application of agreements and conventions that provide for the avoidance/elimination of double taxation

Mutual Agreement Procedure under agreements or conventions for the avoidance/elimination of double taxation and under 90/436/EEC Convention on the elimination of double taxation in connection with the adjustment of profits of associated enterprises

Note: The information in this document is provided as a guideline only and does not constitute instruction/assistance or legal advice.

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INTRODUCTION

The Mutual Agreement Procedure is provided for in conventions on the avoidance of double taxation whose purpose is to regulate the allocation of taxation rights in relation to profits from cross-border economic activities and to prevent double taxation by allowing the competent authorities of the contracting states to interact and consult each other in order to solve the problems arising from the application of the conventions.

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PURPOSE OF THE GUIDE

The purpose of this guide is to provide guidance on obtaining assistance from the competent authority in Romania to taxpayers who fall within the scope of a tax treaty that Romania has with its treaty partners. This assistance is provided to taxpayers to try to resolve tax disputes involving double taxation and inconsistencies in the interpretation and application of a double taxation convention.

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LEGAL BASIS

- **Law 207/2015 on the Fiscal Procedure Code, with subsequent amendments and additions, art. 282**
🔗 https://static.anaf.ro/static/10/Anaf/cod_procedura/Cod_Procedura_Fiscala_2023.htm#_RefHeading_3717_1651101228
- **Convention or Agreement for the avoidance of double taxation concluded by Romania with another state**
🔗 https://static.anaf.ro/static/10/Anaf/AsistentContribuabili_r/Conventii/Conventii.htm
- **Convention on the elimination of double taxation in connection with the adjustment of profits of associated enterprises (90/436/EEC)**
🔗 https://static.anaf.ro/static/10/Anaf/Prezentare_R/Conventie_arbitraj_rom.pdf
- **Revised Code of Conduct for the effective implementation of the Convention on the elimination of double taxation in connection with the adjustment of profits of associated enterprises (2009/C322/01)**
🔗 https://static.anaf.ro/static/10/Anaf/Prezentare_R/Code_Conduct_2009_C322_01.pdf

Requests to initiate the MAP submitted until the date of entry into force of Government Ordinance no. 16/2023 are resolved in accordance with the provisions in force on the date of submission of the request for the initiation of the MAP.

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THE COMPETENT AUTHORITY IN ROMANIA

The competent authority for carrying out the Mutual Agreement Procedure is the National Fiscal Administration Agency (NAFA).

Contact details – The competent authority

✉ Address:

Apolodor Street no. 17, Postal Code 050741, Sector 5,
Bucharest, Romania

☎ Phone:

+ 021 327 06 28

@ E-mail:

secretariat.dgcif@anaf.ro

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WHO CAN REQUEST THE INITIATION OF THE MAP

- The taxpayer resident in Romania, for and on his behalf, can request NAFA to initiate the mutual agreement procedure when he considers that the taxation in the other contracting state is not in accordance with the provisions of the respective convention or treaty.
- The taxpayer resident in Romania, for and on his behalf, can request NAFA to initiate the mutual agreement procedure when he considers that the measures taken by one or both contracting states result in his taxation that is not in accordance with the provisions of the respective convention or treaty.
- The taxpayer, for and on his behalf, may request the competent authority of any of the contracting states, if the respective convention or treaty provides for this possibility, to initiate the mutual agreement procedure when he considers that the measures taken by one or both contracting states result in his taxation which is not in accordance with the provisions of that convention or treaty.
- The competent authority of the state with which Romania has concluded a convention or treaty to avoid double taxation requests this from the National Fiscal Administration Agency.

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DEADLINE FOR SUBMITTING THE REQUEST TO INITIATE THE MUTUAL AGREEMENT PROCEDURE

- The request must be submitted within 3 years from the date of receipt of the first notification of the action that results or will result in double taxation, in written form (at the NAFA general registry or by post to the address: Apolodor Street no. 17, Postal code 050741, Sector 5, Bucharest, Romania) and/or in electronic format (at the e-mail address: secretariat.dgcif@anaf.ro). Maximum supported email size: 10 MB.
- The taxpayer can submit a request to initiate the mutual agreement procedure irrespective of the domestic remedies.
- The decision to take legal action is exclusively the attribute of the tax resident taxpayer in Romania, who assumes the decisions made in this regard.
- If the request and its documentation are written in a foreign language, they must be accompanied by translations into Romanian certified by translators authorized by the Ministry of Justice, under the law.
- If the taxpayer intends to submit the same request to initiate the mutual agreement procedure to another competent authority, then the two requests should be submitted simultaneously.

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MINIMUM REQUIREMENTS FOR A MAP REQUEST FOR ASSISTANCE

The request to initiate the mutual agreement procedure is submitted to NAFA and must include the following information and documents:

- Name, address/addresses, tax identification code/tax identification number or numbers, e-mail address, as well as any other information necessary to identify the affected taxpayer or taxpayers who submitted the request to NAFA
- Tax years or tax periods concerned.
- Tax(es) considered.
- Tax amount in RON/EUR/other currency, accompanied by copies of all supporting documents.
- The document representing the first notification of the action which has or will result in taxation not in accordance with the provisions of the Convention for the avoidance of double taxation concluded between states/Convention on the elimination of double taxation in connection with the adjustment of profits of associated enterprises (90/436/EEC)/ other conventions or treaties concluded between states.

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MINIMUM REQUIREMENTS FOR A MAP REQUEST FOR ASSISTANCE

- A reference to the legal rules in force and to the conventions or treaties that generate taxation not in accordance with their provisions.
- Taxpayer's reason(s) on the basis of which he considers that the provisions of the Convention or Treaty have not been respected.
- Details of the facts and circumstances relevant to the case, including details of the structure of the transaction and the relationships between the affected taxpayer and the other parties involved in the relevant transactions, details of the same income received in the other Member State and the inclusion of such income in the taxable income category of the other Member State and details of tax paid or payable in respect of such income in the other Member State.
- Copies of the tax assessment notices, tax audit report or equivalent leading to the alleged double taxation.
- Details of the administrative and judicial appeals exercised by the affected taxpayer or by the other parties, the procedures initiated by the affected taxpayer or the other parties with regard to the relevant transactions, as well as copies of the appeal resolution decisions and/or court rulings pronounced, as the case may be.

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MINIMUM REQUIREMENTS FOR A MAP REQUEST FOR ASSISTANCE

- **Written statement by the taxpayer committing to respond as completely and quickly as possible to all appropriate requests made by NAFA and to provide any documentation at its request.**
- **Information and copies of the supporting documents by which the taxpayer can prove the alleged double taxation.**
- **Any other information and documents considered relevant.**

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STAGES CONCERNING THE REQUEST TO INITIATE THE MUTUAL AGREEMENT PROCEDURE

1. REQUEST ANALYSIS - objectives:

- If the request has been submitted to the appropriate competent authority.
- If the request has been submitted to the competent authority within the deadline provided for in the convention or treaty to avoid double taxation, considered from the first tax assessment notice which results in taxation not in accordance with the convention or tax treaty.
- If the request and documentation are complete and according to the requirements of the legal provisions.
- Whether or not the request is well-founded regarding the existence/non-existence of the alleged double taxation.

The competent authority can request, both from the taxpayer and from other bodies/authorities, additional information and documents other than those presented by the taxpayer or can perform tax audits to that taxpayer.

- a) If, following the analysis, the competent authority finds that the request is not founded, it is rejected concluding that the objection is not justified.
- b) If, following the analysis, the competent authority finds that the request is well-founded, it will follow the second stage.

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STAGES CONCERNING THE REQUEST TO INITIATE THE MUTUAL AGREEMENT PROCEDURE

2. UNILATERAL STAGE

- If the competent authority finds that the request is well-founded, all efforts will be made in order to resolve the request unilaterally and eliminate double taxation in accordance with the legal provisions in force.
- If the competent authority finds that it is unable to reach a satisfactory unilateral solution, it will follow the third stage.

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STAGES CONCERNING THE REQUEST TO INITIATE THE MUTUAL AGREEMENT PROCEDURE

3. BILATERAL STAGE

A request to initiate the mutual agreement procedure will go through the bilateral stage if it meets two requirements:

- The competent authority found that the taxpayer's request is well-founded;
- The competent authority is unable to reach a satisfactory unilateral solution.

The competent authority that receives the request to initiate the mutual agreement procedure from the taxpayer shall notify the other competent authority, in accordance with the provisions of the Conventions or Treaties for the avoidance of double taxation concluded between the States, in order to make all efforts with the aim of reaching a bilateral solution in accordance with Tax Convention or Treaty.

The start date mutually agreed upon by the two competent authorities shall be a date subsequent to the date on which all supporting information and/or documents are received by the competent authority.

After the start date the two competent authorities will be in correspondence and make efforts to resolve the request in accordance with the Tax Convention or Treaty.

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STAGES CONCERNING THE REQUEST TO INITIATE THE MUTUAL AGREEMENT PROCEDURE

3. BILATERAL STAGE

The end date is:

- **the date of the written official communication to the taxpayer from the competent authority to inform him of the outcome of his request to initiate the mutual agreement procedure;**
- or**
- **the date on which the competent authority receives a notification from the taxpayer regarding the withdrawal of his request to initiate the mutual agreement procedure.**

The competent authority that receives the request for the initiation of the mutual agreement procedure from the taxpayer notifies the other competent authority regarding the end date and the reason (outcome).

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STAGES CONCERNING THE REQUEST TO INITIATE THE MUTUAL AGREEMENT PROCEDURE

4. THE RESULT OF A REQUEST TO INITIATE THE MUTUAL AGREEMENT PROCEDURE

The outcome of a request to initiate the mutual agreement procedure may be one of the following:

- 1. Denied MAP access**
- 2. Objection is not justified**
- 3. Withdrawn by taxpayer**
- 4. Unilateral relief granted**
- 5. Resolved by domestic remedy**
- 6. Agreement that will fully eliminate double taxation or fully resolve taxation not in accordance with the tax treaty**
- 7. Agreement that will partially eliminate double taxation or partially resolve taxation not in accordance with the tax treaty**
- 8. Agreement that there is no taxation not in accordance with the tax treaty**
- 9. No agreement including agreement to disagree**
- 10. Any other outcome**

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DOMESTIC REMEDIES

- The taxpayer can submit a request to initiate the mutual agreement procedure regardless of the domestic remedies.
- The competent authority in Romania respects the provisions of the domestic legislation and is obliged by law to respect a final court decision, a final Decision on settlement of appeals, a final tax administrative act or a final administrative act.
- For Romanian taxpayers with tax residence in Romania, the competent authorities that can order the modification or cancellation of tax administrative documents issued by a tax authority in Romania, respectively tax audit report and tax assessment notice, are either within the Ministry of Public Finance - the structures with attributions for the settlement of appeals, or the legal courts in Romania.

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ARBITRATION CLAUSE

- The arbitration clause can be invoked only to the extent that it is provided for in Conventions or Treaties for the avoidance of double taxation concluded between the states and only with the mutual consent of the competent authorities of the two contracting states.

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CONFIDENTIALITY OF INFORMATION

- The exchange of information for the purpose of a request to initiate the mutual agreement procedure is carried out in accordance with the provisions on the exchange of information in the applicable Convention or Treaty for the avoidance of double taxation, as well as with the provisions of the domestic legislation on professional and fiscal secrecy.

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OTHER GUIDELINES

- **Exemption from collections, interest and penalties – in accordance with domestic law, there is no suspension of the collection of taxes and duties during the mutual agreement procedure.**

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MULTILATERAL MAPs (MTC)

- If a request to initiate the mutual agreement procedure involves more than two states, the competent authority in Romania will consider initiating a series of bilateral discussions as a way to deal with such multilateral situations.

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ADVANCE PRICE AGREEMENT (APA)

The normative framework for the request and settlement of requests for advance price agreement issuance (unilateral/bilateral/multilateral) is provided by:

- Law 207/2015 on the Fiscal Procedure Code, with subsequent amendments and additions, art. 52
 https://static.anaf.ro/static/10/Anaf/cod_procedura/Cod_Procedura_Fiscala_2023.htm#_RefHeading_3257_1651101228
- Order of the President of the National Fiscal Administration Agency no. 3735/2015 for the approval of the procedure regarding the issuance and modification of the advance price agreement, as well as the content of the request for issuance and modification of the advance price agreement
 https://static.anaf.ro/static/10/Anaf/legislatie/OPANAF_3735_2015.pdf