



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 for the avoidance/elimination of double taxation based on Council Directive (EU) 2017/1852 on tax dispute resolution mechanisms in the European Union

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

Mutual Agreement Procedure Guide (MAP)

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.

Mutual Agreement Procedure Guide (MAP)

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 treaty.

Mutual Agreement Procedure Guide (MAP)

LEGAL BASIS

- Law 207/2015 on the Fiscal Procedure Code, with subsequent amendments and additions, art. 283¹ to art. 283¹⁹

🔗 https://static.anaf.ro/static/10/Anaf/cod_procedura/Cod_Procedura_Fiscala_2023.htm#_RefHeading__9011_1651101228

- Convention or Agreement for the avoidance of double taxation concluded by Romania with another state

🔗 https://static.anaf.ro/static/10/Anaf/AsistentaContribuabili_r/Conventii/Conventii.htm

The provisions of Directive (EU) 2017/1852 of the Council regarding the mechanisms for the resolution of fiscal disputes in the European Union, were transposed into Law no. 207/2015 on the Fiscal Procedure Code, with subsequent amendments and additions, to Chapter II – Mutual agreement procedure for the avoidance/elimination of double taxation based on Council Directive (EU) 2017/1852 on mechanisms for the resolution of fiscal disputes in the European Union, of art. 283¹ to art. 283¹⁹, provisions that apply to any complaint filed on or after July 1, 2019, in respect of disputed matters relating to income or capital obtained in a financial year starting on or after January 1, 2018.

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.

Mutual Agreement Procedure Guide (MAP)

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

Mutual Agreement Procedure Guide (MAP)

DEFINITIONS

- **Double taxation** – the imposition by two or more Member States of taxes covered by an agreement or convention which provide for the elimination of double taxation on income and, where applicable, on capital, to which Romania is a party, in respect of the same taxable income or capital when it gives rise to either an additional tax charge, an increase in tax liabilities or the cancellation or reduction of losses that could be used to offset taxable profits.
- **Question in dispute** – the fact that generates disputes between Member States when those disputes arise following the interpretation and application of agreements and conventions that provide for the elimination of double taxation on income and, where applicable, on capital, to which Romania is a party.
- **Affected person** – any person, an individual or an enterprise, that is a resident of Romania or another Member State for tax purposes, and whose taxation is directly affected by a question in dispute.
- **Competent court** – the competent administrative court according to Law no. 554/2004, with subsequent amendments and additions.

Mutual Agreement Procedure Guide (MAP)

WHO CAN FILE A COMPLAINT

- The affected person, after receiving a tax decision concerning double taxation, has the right to submit a complaint regarding a question in dispute to NAFA, requesting the resolution thereof.
- ✓ The affected person who wishes to withdraw a complaint shall simultaneously submit a written notice of withdrawal to each competent authority of the Member States concerned. The notification puts an end, without delay, to all ongoing proceedings.
- ✓ The affected person may withdraw the complaint before a mutual agreement is reached or before the final decision is issued by the competent authorities involved.

Mutual Agreement Procedure Guide (MAP)

DEADLINE FOR FILING THE COMPLAINT

- The complaint must be filed within 3 years from the notification of the tax decision that results, or that will result in, the question in dispute, regardless of whether the affected person has resorted to the administrative or judicial appeals available under the legal rules in force.
- The affected person shall simultaneously submit the complaint with the same information to each competent authority of the Member States concerned, within 3 years from the notification of the tax decision that results, or that will result in, the question in dispute, and shall indicate in the complaint which other Member States are involved.
- The complaint must be submitted 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 e-mail size: 10 MB.
- If the complaint 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.

Mutual Agreement Procedure Guide (MAP)

MINIMUM REQUIREMENTS OF THE COMPLAINT

The affected person's complaint must include the following information and documents:

- ✓ Name, address(es), tax identification code/fiscal identification number(s), e-mail address, as well as any other information necessary to identify the affected person or persons who submitted the complaint to NAFA and any other affected person.
- ✓ The 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 that represents the first notice of the action that has or will result in a question in dispute.
- ✓ A reference to the legal norms in force and to the treaties or conventions that provide for the elimination of double taxation on income and, where applicable, on capital, to which Romania is a party.
- ✓ The reason why the affected person believes that there is a question in dispute.

Mutual Agreement Procedure Guide (MAP)

MINIMUM REQUIREMENTS OF THE COMPLAINT

- ✓ Details on the facts and circumstances relevant to the case, including details on the structure of the transaction and the relationships between the affected person and the other parties involved in the relevant transactions, as well as on the facts established in good faith in a mutually binding agreement or individual tax solution anticipated or advance pricing agreement provided for in art. 52, previously concluded between the affected person and the tax administration, as the case may be.
- ✓ Information regarding the nature and date of the actions that led to the question in dispute.
- ✓ Details of the same income received in the other Member State and of the inclusion of such income in the category of taxable income in the other Member State and details of the tax paid or to be paid in respect of such income in the other Member State.
- ✓ Copies of the final tax assessment decision, tax audit report or other equivalent document leading to the question in dispute.
- ✓ Details of the administrative and judicial appeals exercised by the affected person, the procedures initiated by the affected person with regard to the relevant transactions, as well as copies of the appeal resolution decisions and/or of the court judgments rendered, as the case may be, in relation to the question in dispute.

Mutual Agreement Procedure Guide (MAP)

MINIMUM REQUIREMENTS OF THE COMPLAINT

- ✓ Written statement by the affected person 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 regarding the tax assessment decision leading to the question in dispute, including the tax assessment decision that remains final in administrative or judicial appeals system, issued by NAFA, as well as a copy of any other documents issued by the other tax authorities of the Member States concerned in relation to the question in dispute, as appropriate.
- ✓ Information regarding any complaint submitted by the affected person based on another mutual agreement procedure or another procedure for the resolution of disputes regarding the same question in dispute, respectively the agreements or conventions to avoid double taxation to which Romania is a party and Convention 90/436/EEC on the elimination of double taxation in connection with the adjustment of the profits of associated enterprises.

Mutual Agreement Procedure Guide (MAP)

MINIMUM REQUIREMENTS OF THE COMPLAINT

- ✓ A written statement by the affected person committing that the filing of a complaint puts an end to any other mutual agreement or dispute resolution procedure carried out under the agreements or conventions to avoid double taxation to which Romania is a party and the Convention 90/436/EEC on the elimination of double taxation in connection with the adjustment of profits of associated enterprises, and concerning the same question in dispute. Such other ongoing proceedings concerning the relevant question in dispute shall come to an end with effect from the date of the first receipt of the complaint by any of the competent authorities of the Member States concerned.
 - ✓ Information and copies of supporting documents by which the affected person can prove the question in dispute.
 - ✓ Any other information and documents considered relevant.
- Within 90 days from the date of receipt of the complaint, NAFA may request additional information and documents to those mentioned above, which are necessary to carry out a substantive examination of the case.
 - The affected person shall reply within 90 days from the date of receipt of the NAFA request and shall simultaneously send a copy of this reply to the competent authorities of the other Member States concerned.

Mutual Agreement Procedure Guide (MAP)

DECISION OF THE COMPETENT AUTHORITY ON THE COMPLAINT

- **NAFA shall notify both the affected person and the other competent authorities of the concerned Member States regarding the receipt of the complaint, within 60 days from the date of its registration.**
- **NAFA shall inform the other competent authorities of the Member States concerned about the language of communication it uses during the procedures.**
- **If NAFA receives a notification from the affected person who wishes to withdraw the complaint, NAFA shall immediately inform the other competent authorities of the Member States concerned about the conclusion of the procedures.**
- **If, for any reason, a question in dispute ceases to exist, all ongoing procedures shall be concluded, and NAFA shall immediately inform the affected person of the factual and legal reasons for the termination of the procedures.**

Mutual Agreement Procedure Guide (MAP)

DECISION OF THE COMPETENT AUTHORITY ON THE COMPLAINT

- Within 180 days of receiving the complaint or within 180 days of receiving the information and documents requested by NAFA within 90 days of receiving the complaint, if this date is later than the first, NAFA shall decide whether:
 - a) accepts the complaint and starts the mutual agreement procedure;
 - b) accepts the complaint and resolves the question in dispute, unilaterally, without the involvement of the other competent authorities;
 - c) rejects the complaint.
- NAFA may decide to reject the complaint if:
 - a) the complaint does not contain the information and documents requested according to the legal provisions;
 - b) the affected person does not provide the information and documents requested by NAFA;
 - c) there is no question in dispute;
 - d) the complaint was not filed within 3 years from the notification of the tax decision resulting in, or that will result in, the question in dispute.

Mutual Agreement Procedure Guide (MAP)

DECISION OF THE COMPETENT AUTHORITY ON THE COMPLAINT

- **NAFA shall immediately notify the affected person and the competent authorities of the Member States concerned regarding the decision taken.**
- **If NAFA decides to resolve the disputed issue unilaterally, the ongoing procedures are concluded.**
- **If NAFA has not made any decision regarding the complaint within the legal term, the complaint is deemed to have been accepted by it.**
- **If the complaint has been rejected, the affected person can proceed as follows:**
 - a) **if the complaint was rejected by all the competent authorities concerned, the affected person may appeal the rejection decision issued by NAFA, by way of derogation from the provisions of art. 7 of Law no. 554/2004 with subsequent amendments and additions, directly to the competent court, within 30 days from the date of receipt of the notification, while the decision to reject the complaint is still subject to a judicial appeal, according to the legal rules in force;**
 - b) **if the complaint has been rejected by at least one, but not all the competent authorities concerned, the affected person can submit to NAFA a request for the set up of the Advisory Commission.**

Mutual Agreement Procedure Guide (MAP)

DECISION OF THE COMPETENT AUTHORITY ON THE COMPLAINT

- The affected person who exercises the right to such an appeal cannot address a request for the set up of the Advisory Commission:
 - a) while the decision to reject the complaint is still subject to a judicial appeal, according to the legal rules in force;
 - b) where the decision rejecting the complaint can still be further appealed, based on the appeal procedure in the other Member States concerned;
 - c) where the decision rejecting the complaint has been confirmed on the basis of the appeal procedure and the decision of the competent court or other relevant judicial authorities in any of the Member States concerned cannot be denied. Where the right of appeal has been exercised, the decision of the relevant court or other relevant judicial authority shall be taken into account.

Mutual Agreement Procedure Guide (MAP)

MUTUAL AGREEMENT PROCEDURE

- If NAFA and the other competent authorities of the Member States concerned accept the complaint, NAFA shall take the necessary steps to resolve the question in dispute, through the mutual agreement procedure (MAP), within 2 years, which starts to run from the date of the last notification of the acceptance decision of the complaint of one of the competent authorities of the Member States concerned. In well-justified cases, the deadline can be extended by up to one year at the request of NAFA or of any of the competent authorities of the Member States concerned addressed to all other competent authorities of the Member States concerned.
- If NAFA has reached an agreement with the other competent authorities of the Member States concerned as to how to resolve the question in dispute within the legal time frame, NAFA shall issue by order of the president of NAFA the decision to conclude the mutual agreement procedure, which it shall immediately send to the person affected. The decision to conclude the mutual agreement procedure shall become binding and enforceable, provided that the affected person accepts it and waives the right to pursue any other appeal, either administrative or judicial. If other appeals are ongoing, the decision to conclude the mutual agreement procedure thus becomes binding and enforceable only after the affected person provides NAFA with evidence that action has been taken to terminate those proceedings.

Mutual Agreement Procedure Guide (MAP)

MUTUAL AGREEMENT PROCEDURE

Such evidence must be presented within no more than 60 days from the date on which the respective decision was communicated to the affected person. The decision to conclude the mutual agreement procedure shall be implemented immediately, irrespective of any time limits provided by the legal rules in force.

- In the event that NAFA and the competent authorities of the Member States concerned have not reached an agreement on how to resolve the question in dispute within the legal term, NAFA shall notify the affected person thereof, indicating the factual and legal reasons for the failure to reach agreement.

Mutual Agreement Procedure Guide (MAP)

DISPUTE RESOLUTION BY THE ADVISORY COMMISSION

Upon a request that the affected person addresses to NAFA and the other competent authorities of the Member States concerned, it will, together with the other competent authorities of the Member States concerned, set up an Advisory Commission in the event that:

- the complaint submitted by the affected person is rejected by at least one of the competent authorities of the Member States concerned, but not by all.
 - The affected person shall make the request to the set up of the Advisory Commission if no judicial appeal can be exercised against the decision to reject the complaint or there is no judicial appeal in progress or he has formally renounced his right of appeal. The application includes a written statement to that effect.
 - The Advisory Commission shall adopt a decision on the acceptance or rejection of the complaint within 180 days from the date of its establishment. It shall notify its decision to the competent authorities within 30 days of its adoption. If the advisory committee adopts a decision to accept the complaint, at the request of NAFA or one of the other competent authorities of the Member States concerned, the mutual agreement procedure is initiated.

Mutual Agreement Procedure Guide (MAP)

DISPUTE RESOLUTION BY THE ADVISORY COMMISSION

- The competent authority requesting the initiation of the mutual agreement procedure shall notify this request to the Advisory Commission, the other competent authorities of the Member States concerned and the affected person. The legal time limit shall start from the date of the notification of the decision taken by the Advisory Commission regarding the acceptance of the complaint. If neither NAFA nor the other competent authorities concerned have requested the initiation of the mutual agreement procedure within 60 days from the date of notification of the decision of the Advisory Commission accepting the complaint, the Advisory Commission shall issue an opinion on how to resolve the question in dispute.
- If the Advisory Commission adopts a decision rejecting the complaint, the proceedings under this article shall be terminated.
- NAFA together with the other competent authorities of the Member States concerned have accepted the complaint submitted by the affected person, but have not reached an agreement on how to resolve the question in dispute within the legal term.
 - the Advisory commission shall deliver an opinion on how to resolve the question in dispute.

Mutual Agreement Procedure Guide (MAP)

DISPUTE RESOLUTION BY THE ADVISORY COMMISSION

- ✓ The affected person shall make the request to set up an Advisory Commission in writing, not later than 50 days from the date of receipt of the notification from NAFA regarding the decision taken or the notification from NAFA that the competent authorities of the Member States concerned have not reached an agreement, or 50 days from the date of the decision by the competent court, as the case may be.
- ✓ The Advisory Commission shall be set up not later than 120 days from the receipt of such request. In this sense, its chair shall inform the affected person thereof without delay.

Mutual Agreement Procedure Guide (MAP)

APPOINTMENTS BY COMPETENT COURTS OR NATIONAL APPOINTING BODY

- If an Advisory Commission is not set up within the legal term, the affected person may apply to a competent court or to any other body or person designated in their national law for the carrying out of such function (national appointing body) of the Member States concerned to set up the Advisory Commission.
- If NAFA has not appointed at least one independent person and a substitute in the Advisory Commission, the affected person may send a notification to the national appointing body to make appointments in the Advisory Commission from the list of independent persons. In Romania, the national body empowered to make appointments is the Ministry of Finance.
- In the event that NAFA has not appointed at least one independent person and one substitute in the Advisory Commission, and the other competent authorities of the Member States concerned have not done so, the affected person can file a complaint with the Ministry of Finance, the competent courts or the national appointing bodies from the other Member States to appoint the two independent persons from the list of independent persons.

Mutual Agreement Procedure Guide (MAP)

APPOINTMENTS BY COMPETENT COURTS OR NATIONAL APPOINTING BODY

- The notification of the affected person shall be submitted within 30 days from the expiration of the 120-day period from the receipt of the request for the set up of the Advisory Commission.
- An independent person and a substitute from the list of independent persons shall be appointed by order of the Minister of Public Finance. Subsequently, the Ministry of Public Finance communicates the order to both the affected person and NAFA. NAFA informs the other authorities involved about the order issued by the Ministry of Finance.
- Affected persons shall address the notification regarding the appointment of independent persons and their substitutes to each of their states of residence, if at least two affected persons are involved in the procedure, or to the Member States whose competent authorities have failed to appoint at least one independent person and a substitute, if only one affected person is involved.

Mutual Agreement Procedure Guide (MAP)

THE ALTERNATIVE DISPUTE RESOLUTION COMMISSION

- NAFA, together with the other competent authorities of the Member States concerned, may agree to set up:
 - a) an Advisory Commission;
 - b) an Alternative Dispute Resolution Commission, hereinafter referred to as the Alternative Dispute Resolution Commission, instead of an Advisory Commission, to issue an opinion on how to resolve the question in dispute;
 - c) exceptionally, a dispute resolution commission in the form of a committee that has a permanent nature, hereinafter referred to as the Standing Committee.
- The Alternative Dispute Resolution Commission and the Standing Committee may apply any dispute resolution procedure, as appropriate, to resolve the question in dispute with binding effect. As an alternative to the type of dispute settlement procedure applied by the Advisory Commission, namely the independent opinion process, any other type of dispute resolution process, including the ‘final offer’ arbitration process, can be agreed by the competent authorities of the Member States concerned and applied by the Alternative Dispute Resolution Commission.

Mutual Agreement Procedure Guide (MAP)

RULES OF FUNCTIONING

- **NAFA shall draw up, in agreement with the competent authorities of the Member States concerned, the Rules of Functioning of the Advisory Commission or the Alternative Dispute Resolution Commission. The Rules of Functioning shall be drawn up at each setting up of one of the aforementioned commissions and shall include at least the following elements:**
 - a) the description and the characteristics of the question in dispute;**
 - b) the terms of reference on which the competent authorities of the Member States agree as regards the legal and factual questions to be resolved;**
 - c) the form of the dispute resolution body, which shall be either an Advisory Commission or an Alternative Dispute Resolution Commission, as well as the type of process for any alternative dispute resolution, if the process differs from the independent opinion process applied by an Advisory Commission;**
 - d) the time frame for the dispute resolution procedure;**
 - e) the composition of the Advisory Commission or Alternative Dispute Resolution Commission, including the number and names of the members, details of their competence and qualifications, and disclosing any conflicts of interest of the members;**

Mutual Agreement Procedure Guide (MAP)

RULES OF FUNCTIONING

- f) the rules governing the participation of the affected person(s) and third parties in the proceedings, exchanges of memoranda, information and evidence, the costs, the type of dispute resolution process to be used, and any other relevant procedural or organisational matters;
 - g) the logistical arrangements for the Advisory Commission's proceedings and delivery of its opinion.
- The Rules of Functioning shall be signed between the competent authorities of the Member States involved in the dispute.
- Within 120 days of receiving the request for the set up of the Advisory Commission, NAFA shall notify the affected person of the following:
 - a) the Rules of Functioning of the Advisory Commission or Alternative Dispute Resolution Commission;
 - b) the date by which the opinion on the resolution of the question in dispute shall be adopted;
 - c) references to any applicable legal provisions in national law of the Member States and to any applicable agreements or conventions.

Mutual Agreement Procedure Guide (MAP)

RULES OF FUNCTIONING

- Where NAFA has not notified the Rules of Functioning to the affected person, the independent persons and the Chair shall complete the Rules of Functioning on the basis of the standard form provided for by the European Commission pursuant to art. 11 para (3) of Directive (EU) 1.852/2017, and shall send them to the affected person within 15 days from the date that the Advisory Commission or Alternative Dispute Resolution Commission was set up. Where the independent persons and the Chair have not agreed on the Rules of Functioning or have not notified them to the affected person, the affected person or affected persons may apply to a competent court in one of the Member States concerned in order to obtain an order for the implementation of the Rules of Functioning.

Mutual Agreement Procedure Guide (MAP)

COSTS OF PROCEEDINGS

- **The following costs shall be shared equally among the Member States:**
 - a) **the expenses of the independent persons of standing, which are to be an amount equivalent to the average of the usual amount reimbursed to high ranking civil servants of the Member States concerned;**
 - and**
 - b) **the fees of the independent persons, where applicable, which are to be limited to EUR 1 000 per person per day for every day on which the Advisory Commission or Alternative Dispute Resolution Commission meets.**
- **Where NAFA and the other competent authorities of the Member States concerned agree, all the costs mentioned above shall be borne by the affected person has made:**
 - a) **a notification of withdrawal of the complaint, which terminates, without delay, all ongoing proceedings;**
 - or**
 - b) **a request for the set up of the Advisory Commission following NAFA's decision to reject the complaint, and the Advisory Commission has decided that the relevant competent authorities have justifiably rejected the complaint.**

Mutual Agreement Procedure Guide (MAP)

COSTS OF PROCEEDINGS

- **Costs that are incurred by the affected person shall not be borne by Member States.**
- **The costs provided for in this article, which fall to the Romanian state, according to the provisions of the operating regulation provided for in art. 283¹¹, shall be borne by the NAFA budget.**

Mutual Agreement Procedure Guide (MAP)

INFORMATION, EVIDENCE AND HEARINGS

- Where the competent authorities of the Member States concerned agree, the affected person(s) concerned may provide the Advisory Commission or Alternative Dispute Resolution Commission with any information, evidence or documents that may be relevant for the decision. The affected person(s) and NAFA shall provide any information, evidence or documents upon request by the Advisory Commission or Alternative Dispute Resolution Commission.
- By way of exception, NAFA may refuse to provide information to the Advisory Commission in any of the following cases:
 - a) obtaining the information requires carrying out administrative measures that are against national law;
 - b) the information cannot be obtained under the national law;
 - c) the information concerns trade secrets, business secrets, industrial secrets, professional secrets or trade processes;
 - d) the disclosure of the information is contrary to public policy.

Mutual Agreement Procedure Guide (MAP)

INFORMATION, EVIDENCE AND HEARINGS

- Affected persons may, at their request and with the consent of the competent authorities of the Member States concerned, appear or be represented before an Advisory Commission or Alternative Dispute Resolution Commission. Affected persons shall appear or be represented before it upon request by the Advisory Commission or Alternative Dispute Resolution Commission.
- The independent persons of standing or any other member appointed by NAFA shall be subject to obligations of professional secrecy under the national law concerned in relation to information they receive in their capacity as members of the Advisory Commission or the Alternative Dispute Resolution Commission.
- Affected persons, and where applicable, their representatives, shall undertake to treat any information (including knowledge of documents) that they receive during such proceedings as secret. The affected person and his representatives shall make a declaration to this effect to NAFA when so requested during the proceedings.

Mutual Agreement Procedure Guide (MAP)

THE OPINION OF THE ADVISORY COMMISSION OR ALTERNATIVE DISPUTE RESOLUTION COMMISSION

- An Advisory Commission or an Alternative Dispute Resolution Commission shall notify its opinion to the competent authorities of the Member States concerned within 180 days of the date on which it was set up. If the Advisory Commission or the Alternative Dispute Resolution Commission considers that, given the nature of the question in dispute, more than 180 days are needed to issue an opinion, this term may be extended by 90 days. The Advisory Commission or the Alternative Dispute Resolution Commission shall inform the competent authorities of the Member States concerned and the affected persons of the extension.
- The Advisory Commission or the Alternative Dispute Resolution Commission shall base its opinion on the provisions of the applicable agreements or conventions that provide for the elimination of double taxation on income and, where applicable, on capital, to which Romania is a party, as well as on any of the applicable legal rules in force.
- The Advisory Commission or Alternative Dispute Resolution Commission shall adopt its opinion by a simple majority of its members. Where a majority cannot be reached, the vote of the chair shall determine the final opinion. The chair shall communicate the opinion of the Advisory Commission or Alternative Dispute Resolution Commission to the competent authorities.

Mutual Agreement Procedure Guide (MAP)

FINAL DECISION

- Within 180 days from the notification of the opinion of the Advisory Commission or the Alternative Dispute Resolution Commission, NAFA together with the competent authorities of the Member States concerned shall proceed as follows:
 - a) agree on how to resolve the question in dispute and issue a final decision respecting the opinion of the Advisory Commission or the Alternative Dispute Resolution Commission;
 - b) agree on how to resolve the question in dispute and issue a final decision without respecting the opinion of the Advisory Commission or the Alternative Dispute Resolution Commission;
 - c) disagree on how to resolve the question in dispute and issue a final decision respecting the opinion of the Advisory Commission or the Alternative Dispute Resolution Commission.
- If the affected person is a tax resident in Romania, NAFA shall notify the final decision on the resolution of the question in dispute to the affected person without delay. In the absence of such notification within 30 days of the decision having been taken, the affected person may apply to the competent court for a decision.

Mutual Agreement Procedure Guide (MAP)

FINAL DECISION

- The final decision shall be binding on the Member States concerned and shall not constitute a precedent. The final decision shall be implemented subject to the affected person(s) accepting the final decision and renouncing the right to any domestic remedy within 60 days from the date when the final decision was notified, where applicable.
- NAFA shall implement the final decision by amending the taxation, irrespective of any time limits provided for by the legal rules in force.
- By way of exception, the final decision is not implemented by NAFA if the Bucharest Court of Appeal decides that, according to the legal rules in force regarding appeals and by applying the criteria set out in art. 283⁸ para. (4) and (6), there was a lack of independence of the independent persons appointed by NAFA in the Advisory Commission.
- If the final decision has not been implemented by NAFA, the affected person can file a complaint with the Bucharest Court of Appeal to request the implementation of the final decision.

Mutual Agreement Procedure Guide (MAP)

INTERACTION WITH NATIONAL PROCEEDINGS AND DEROGATIONS

- The affected person may resort to the procedures provided by Chapter II of Law no. 207/2015 even if the tax decision that gave rise to the question in dispute has become final in the national appeals system.
- Submitting the question in dispute for resolution by applying the mutual agreement procedure or the alternative dispute resolution procedure provided for in art. 283⁴ and, respectively, in art. 283⁶ shall not prevent the initiation or continuation, in Romania, of judicial proceedings or proceedings regarding administrative and criminal penalties related to the same issues.
- Affected persons may have recourse to the legal remedies available to them under the legal rules in force. However, where the affected person has initiated procedures to introduce such an appeal, the terms referred to in art. 283⁴ para. (1), respectively in art. 283⁵ para. (1) and (2) shall start to run from the date on which a judgement delivered in those proceedings has become final or on which those proceedings have otherwise been definitively concluded or where the proceedings have been suspended.

Mutual Agreement Procedure Guide (MAP)

INTERACTION WITH NATIONAL PROCEEDINGS AND DEROGATIONS

- In the event that a final judgement on the question in dispute was issued by the competent court in Romania, before the competent authorities of the Member States in question have reached an agreement under the mutual agreement procedure, provided for in art. 283⁵, regarding the question in dispute, NAFA shall notify the final judgement of the competent court to the other competent authorities of the Member States concerned, and that procedure shall be terminated as from the date of such notification.
- The provisions of art. 283⁶ para. (1) shall not apply if the question in dispute had remained unresolved during the entire mutual agreement procedure provided for in art. 283⁵ and a final decision on the question in dispute was issued by the competent court in Romania before the affected person submitted a request according to art. 283⁶ para. (1). In this case NAFA shall inform the other competent authorities of the Member States concerned about the effect of this decision of the competent court.

Mutual Agreement Procedure Guide (MAP)

INTERACTION WITH NATIONAL PROCEEDINGS AND DEROGATIONS

- The dispute resolution process provided for in art. 283⁶ shall be terminated if the final judgment of the competent court has been rendered at any time after an affected person has made a request under art. 283⁶ para. (1), but before the issuance by the Advisory Commission or the Alternative Dispute Resolution Commission of its opinion addressed to the competent authorities of the Member States concerned, according to the provisions of art. 283¹⁴, in which case NAFA shall inform the other competent authorities of the Member States concerned and the Advisory Commission or the Alternative Dispute Resolution Commission regarding the effect of this decision of the competent court.
- By way of derogation to art. 283⁶, NAFA may refuse access to the dispute resolution procedure provided for in the respective article in cases where penalties have been imposed in Romania in relation to income or capital adjusted for tax evasion crimes, including related crimes. If judicial or administrative proceedings have been initiated which could lead to such sanctions, and these proceedings are carried out simultaneously with any of the procedures mentioned in this chapter, NAFA may suspend the proceedings carried out under this chapter from the date of acceptance of the complaint until on the date of the final outcome of those proceedings.

Mutual Agreement Procedure Guide (MAP)

INTERACTION WITH NATIONAL PROCEEDINGS AND DEROGATIONS

- **NAFA may deny access to the dispute resolution procedure provided for in art. 283⁶ if a question in dispute does not refer to double taxation. In such a case, NAFA shall inform the affected person and the competent authorities of the Member States concerned without delay.**

Mutual Agreement Procedure Guide (MAP)

SPECIAL PROVISIONS FOR INDIVIDUALS, MICRO-ENTERPRISES AND SMALL ENTERPRISES

- If the affected person is an individual, micro-enterprise or small enterprise and is not part of a large group, as defined in the Accounting Regulations on individual annual financial statements and consolidated annual financial statements, approved by the Order of the Minister of Public Finance no. 1.802/2004, with subsequent amendments and additions, the affected person may submit the complaints, replies to a request for additional information, withdrawals, a complaint regarding a question in dispute, a response to NAFA's request for additional information and documents, notification of withdrawal of the complaint and, respectively, the request for the establishment of the Advisory Commission, hereinafter referred to as communications, only to NAFA if the affected person is a tax resident in Romania.
- Within 60 days from the date of receipt of the above communications, NAFA sends, at the same time, a notification to the competent authorities of all the other Member States concerned. After the transmission of the notification, the affected person is considered to have transmitted the communications to all the other Member States concerned on the date of the respective notification.

Mutual Agreement Procedure Guide (MAP)

SPECIAL PROVISIONS FOR INDIVIDUALS, MICRO-ENTERPRISES AND SMALL ENTERPRISES

- **If NAFA receives additional information requested by NAFA within 90 days from the date of receipt of the complaint, it shall, at the same time, transmit a copy to the competent authorities of all other Member States concerned. The communication of additional information shall be deemed to be completed on the date of receipt of such information by all Member States concerned.**

Mutual Agreement Procedure Guide (MAP)

PUBLICITY

- **Advisory Commissions and Alternative Dispute Resolution Commissions shall issue their opinions in writing.**
- **NAFA and the other competent authorities of the Member States concerned may agree to publish the final decisions in its entirety, subject to consent of each of the affected person concerned.**
- **Where the competent authorities or affected person concerned do not consent to publishing the final decision in its entirety, NAFA and the competent authorities of the Member States concerned shall publish an abstract of the final decision. That abstract shall contain all the elements set out in Commission Implementing Regulation (EU) 2019/652 of 24 April 2019 laying down the standard operating rules for the Advisory Commission or the Alternative Dispute Resolution Commission and a standard form for the communication of information relating to the publication of the final decision in accordance with Council Directive (EU) 2017/1852.**

Mutual Agreement Procedure Guide (MAP)

PUBLICITY

- **NAFA, together with the other competent authorities of the Member States concerned, shall send to the affected person, before publication, the information to be published. In no more than 60 days after receiving the respective information, the affected person can request NAFA and the other competent authorities not to publish information that refers to commercial, industrial or professional secrets or to commercial processes or that is contrary to public policy.**
- **NAFA together with the other competent authorities of the Member States in question shall notify the European Commission of the information to be published without delay.**

Mutual Agreement Procedure Guide (MAP)

ROLE OF THE COMMISSION AND ADMINISTRATIVE SUPPORT

- **NAFA shall inform the Commission of the measures they have taken in order to penalise any breach of secrecy.**

Mutual Agreement Procedure Guide (MAP)

OTHER GUIDELINES

- The competent authority in Romania complies with the provisions of the domestic legislation and is bound by law to comply with a final court decision, a final Appeal Resolution Decision, 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 Inspection Report/Tax Audit Report and Final Tax Assessment Notice, are either within the Ministry of Public Finance – the structures with attributions for the settlement of appeals, or the courts in Romania.
- Exemption from collection, interest and penalties – in accordance with domestic law, there is no suspension of the collection of taxes and duties during the complaint procedure.

Mutual Agreement Procedure Guide (MAP)

CONFIDENTIALITY OF INFORMATION

- The exchange of information for the purpose of a complaint is carried out in accordance with the provisions on the exchange of information in the applicable Convention or Agreement for the Avoidance of Double Taxation, as well as with the provisions of the domestic legislation on professional and fiscal secrecy.

Mutual Agreement Procedure Guide (MAP)

ADVANCE PRICING AGREEMENT (APA)

The normative framework for the requesting and processing applications for the issuance of Advance Pricing Agreements (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 on the approval of the procedure of issuing and modifying an advance pricing agreement, as well as the contents of the application for issuing and modifying an advance pricing agreement

 https://static.anaf.ro/static/10/Anaf/legislatie/OPNAFA_3735_2015.pdf