

Mutual Agreement Procedure Guidelines

Index

Mutual Agreement Procedure Guidelines

01

INTRODUCTION

02

SCOPE OF THE MUTUAL AGREEMENT PROCEDURE

03

WHO CAN REQUEST THE INITIATION OF A MUTUAL AGREEMENT PROCEDURE

04

HOW TO INITIATE A MUTUAL AGREEMENT PROCEDURE

05

PROCESSING MUTUAL AGREEMENT PROCEDURES

06

IMPLEMENTATION OF THE AGREEMENT REACHED UNDER A MAP

07

THE MUTUAL AGREEMENT PROCEDURE AND THE PORTUGUESE LEGISLATION

01 INTRODUCTION

02 SCOPE OF MAPS

03 WHO CAN REQUEST A MAP

04 HOW TO INITIATE A MAP

05 PROCESSING MAPs

06 IMPLEMENTATION OF THE AGREEMENT

07 MAPs AND THE PORTUGUESE LEGISLATION

INTRODUCTION



Portugal has been concluding bilateral Conventions for the Avoidance of Double Taxation with respect to Taxes on Income and on Capital based on the OECD Model Tax Convention on Income and on Capital, which establish a procedure to resolve disputes named “Mutual Agreement Procedure”.

The possibility of initiating a Mutual Agreement Procedure (MAP) is also provided for by the Arbitration Convention (AC) – Convention 90/436/EEC, of 23 July 1990, on the elimination of double taxation in connection with the adjustment of profits of associated enterprises.

The purpose of the present Guidelines is to disclose practical information regarding the Mutual Agreement Procedure provided for by the above mentioned legal instruments, whose request for its initiation may be submitted to the Portuguese competent authority.

SCOPE OF THE MUTUAL AGREEMENT PROCEDURE



The request for initiating a Mutual Agreement Procedure (MAP) may be submitted to the Portuguese competent authority under a bilateral Convention for the Avoidance of Double Taxation with respect to Taxes on Income and on Capital (DTC)¹ which applies to the case and/or the Arbitration Convention (AC) - Convention 90/436/EEC, of 23 July 1990, on the elimination of double taxation in connection with the adjustment of profits of associated enterprises² - if it applies to the case, irrespective of the remedies provided by the domestic law of Portugal or of the other State(s) concerned.

¹ The texts of the mentioned DTCs are available at:

http://info.portaldasfinancas.gov.pt/pt/informacao_fiscal/convencoes_evitar_dupla_tributacao/convencoes_tabelas_doclib/pages/english-version.aspx

² The text of the Arbitration Convention can be found at: http://eur-lex.europa.eu/resource.html?uri=cellar:ba007830-4ed1-43f9-8c98-c397c79373d8.0008.02/DOC_1&format=PDF. The Council of the European Union and the representatives of the governments of the Member States adopted a Revised Code of Conduct for the effective implementation of the Arbitration Convention (2009/C 322/01), which can be found at: [http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:42009X1230\(01\)&from=EN](http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:42009X1230(01)&from=EN)

01 INTRODUCTION

02 SCOPE OF MAPs

03 WHO CAN REQUEST A MAP

04 HOW TO INITIATE A MAP

05 PROCESSING MAPs

06 IMPLEMENTATION OF THE AGREEMENT

07 MAPs AND THE PORTUGUESE LEGISLATION



AT
autoridade
tributária e aduaneira

SCOPE OF THE MUTUAL AGREEMENT PROCEDURE



The MAP can be requested where a person covered by a DTC considers that the actions of Portugal and / or of the other State result or will result for him in taxation not in accordance with the provisions of such DTC, namely in cases where:

- ☒ The taxpayer is deemed to be a resident of both States or where there is no agreement on the State of which he is a resident;
- ☒ The taxpayer and the tax authorities do not agree on the existence of a permanent establishment or on the characterization of certain items of income for the purposes of the application of the DTC;
- ☒ The taxpayer and the tax authorities do not agree on the interpretation and application of provisions or principles of the DTC;
- ☒ Transfer pricing adjustments between associated enterprises of different States, have occurred or will occur;
- ☒ Adjustments of profits attributable to a permanent establishment situated in a State of an enterprise of the other State have occurred or will occur;
- ☒ The taxpayer and the tax authorities that have made an adjustment do not agree as to whether the conditions for the application of an anti-abuse provision of a DTC have been met;
- ☒ The taxpayer and the tax authorities that have made an adjustment do not agree as to whether the application of a domestic law anti-abuse provision is in conflict with the provisions of a DTC.

SCOPE OF THE MUTUAL AGREEMENT PROCEDURE



Under the AC, and in accordance with its Article 1(1), the MAP can be requested where, for the purposes of taxation, profits which are included in the profits of an enterprise of a Contracting State are also included or are also likely to be included in the profits of an enterprise of another Contracting State on the grounds that the principles set out in Article 4 thereof have not been observed.

The Mutual Agreement Procedure can be requested even if there is an agreement between the taxpayer and the tax authorities in the scope of an audit.

The Mutual Agreement Procedure can also be requested in cases where **double taxation has occurred or will occur as a result of a bona fide taxpayer-initiated adjustment** made under the domestic law of another State, through the submission of an amendment to a previously-filed tax return to adjust the price for a transaction between associated enterprises or to adjust the profits attributable to a permanent establishment, which, in the view of that taxpayer, is in accordance with the arm's length principle, where that taxpayer has fulfilled all of its obligations related to such taxable income or profits under the Portuguese law and the domestic law of the other State.

01 INTRODUCTION

02 SCOPE OF MAPs

03 **WHO CAN
REQUEST A MAP**

04 HOW TO INITIATE A MAP

05 PROCESSING MAPs

06 IMPLEMENTATION OF THE
AGREEMENT

07 MAPs AND THE PORTUGUESE
LEGISLATION

WHO CAN REQUEST THE INITIATION OF A MUTUAL AGREEMENT PROCEDURE



Any person that is a **resident of Portugal** as defined in the DTC which applies to the case and that considers that the actions of Portugal and / or of the other Contracting State lead or may lead for him in taxation not in accordance with the provisions of such DTC, may irrespective of the remedies provided by the Portuguese legislation or the domestic law of the other Contracting State, present his case to the Portuguese competent authority.

In cases where an adjustment is made that affects associated enterprises resident in different jurisdictions, it is advisable that each of those enterprises submits a request for initiating a MAP to the competent authority of the State of which it is a resident.

01 INTRODUCTION

02 SCOPE OF MAPs

03 WHO CAN REQUEST A MAP

04 HOW TO INITIATE A MAP

05 PROCESSING MAPs

06 IMPLEMENTATION OF THE AGREEMENT

07 MAPs AND THE PORTUGUESE LEGISLATION

WHO CAN REQUEST THE INITIATION OF A MUTUAL AGREEMENT PROCEDURE



Where this is provided for by a DTC concluded by Portugal, any person that is a national of Portugal as defined by the DTC which applies to such case, and that considers that the actions of the other Contracting State lead or may lead for him in taxation not in accordance with the provisions of such DTC, may also present his case to the Portuguese competent authority, irrespective of the remedies provided by the Portuguese legislation or the domestic law of the other Contracting State, if his case comes under the first paragraph of the Article on “Non discrimination” of such DTC.

Under the AC, and in accordance with its Article 6(1), any enterprise of Portugal, or any enterprise of another Member State which is a Party to the AC and has a permanent establishment situated in the Portuguese territory, may request the initiation of a Mutual Agreement Procedure in any case to which the AC applies, irrespective of the remedies provided by the domestic law of the Contracting States concerned.

01 INTRODUCTION

02 SCOPE OF MAPs

03 WHO CAN REQUEST A MAP

04 HOW TO INITIATE A MAP

05 PROCESSING MAPs

06 IMPLEMENTATION OF THE AGREEMENT

07 MAPs AND THE PORTUGUESE LEGISLATION

HOW TO INITIATE A MUTUAL AGREEMENT PROCEDURE



FORMAT OF THE REQUEST; PORTUGUESE COMPETENT AUTHORITY

Requests to initiate a MAP should be submitted, in writing and in paper format, to the Portuguese competent authority, as defined in the legal instruments that apply to the case (usually, the Minister of Finance or the Director General of the Tax and Customs Authority) and sent to the following address:

Direção de Serviços de Relações Internacionais (DSRI)
Av. Eng. Duarte Pacheco, n.º 28 - 4.º andar
1099-013 Lisboa

01 INTRODUCTION

02 SCOPE OF MAPS

03 WHO CAN REQUEST A MAP

04 HOW TO INITIATE A MAP

05 PROCESSING MAPS

06 IMPLEMENTATION OF THE AGREEMENT

07 MAPS AND THE PORTUGUESE LEGISLATION

HOW TO INITIATE A MUTUAL AGREEMENT PROCEDURE



TIME LIMIT TO SUBMIT A MAP REQUEST

Where it is presented under a DTC concluded by Portugal, the request to initiate a MAP must be submitted within the time frame provided under such DTC, counted from the date of the legal notification of the tax assessment made by the Tax Authority, or an equivalent measure, which results or may result in taxation not in accordance with the provisions of such DTC.

Under the AC, the case must be submitted, pursuant to its Article 6(1), within three years of the first notification of the action which results or is likely to result in double taxation within the meaning of its Article 1, namely due to a transfer pricing adjustment.

01 INTRODUCTION

02 SCOPE OF MAPS

03 WHO CAN REQUEST A MAP

04 HOW TO INITIATE A MAP

05 PROCESSING MAPS

06 IMPLEMENTATION OF THE AGREEMENT

07 MAPS AND THE PORTUGUESE LEGISLATION

HOW TO INITIATE A MUTUAL AGREEMENT PROCEDURE



REQUIREMENTS FOR A MAP REQUEST

The request to initiate a **MAP** is not subject to essential formalities (i.e., no form or draft has been defined) besides those mentioned in this section.

Where the request is a **protective MAP request**³, the person that submits the request must expressly declare that the case only needs to be examined following a further notification to do so.

The request must be dated and signed by the person that submits it, or by a duly authorized representative (in which case, a proxy or similar authorization shall be attached).

Pursuant to the laws in force, **the language of the procedure is the Portuguese language**, and therefore the request must always be written in the Portuguese language and the documents attached thereto must, whenever possible, be written in the Portuguese language. In case the documents attached to the request are in a different language, their translation into the Portuguese language can be required.

³ A **protective MAP request** is understood as a MAP request submitted by a person to ensure that it is made within the time frame provided under the legal instrument that applies to the case, but the person indicates that the request only needs to be examined following a further notification to do so. It may be the case, for instance, that the person intends to wait for an administrative or judicial decision before wanting that MAP request to be examined.

01 INTRODUCTION

02 SCOPE OF MAPs

03 WHO CAN REQUEST A MAP

04 HOW TO INITIATE A MAP

05 PROCESSING MAPs

06 IMPLEMENTATION OF THE AGREEMENT

07 MAPs AND THE PORTUGUESE LEGISLATION

HOW TO INITIATE A MUTUAL AGREEMENT PROCEDURE



REQUIREMENTS FOR A MAP REQUEST (CONT.)

The request must include the following information:

- a) Identification and contact details of the person that submits the request and of the other parties to the relevant dealings, including the name or corporate name, the address and, where applicable, the Taxpayer Identification Number (or the date of birth, in the case of an individual who does not have a taxpayer identification number);
- b) Identification of the other States concerned;
- c) Detailed information about the facts and circumstances of the case (including the amounts, the relationships between the person that submits the request and the other parties to the relevant dealings as well as the situations and the structure of such dealings);
- d) Identification of the taxation periods covered;

01 INTRODUCTION

02 SCOPE OF MAPS

03 WHO CAN REQUEST A MAP

04 HOW TO INITIATE A MAP

05 PROCESSING MAPS

06 IMPLEMENTATION OF THE AGREEMENT

07 MAPS AND THE PORTUGUESE LEGISLATION

HOW TO INITIATE A MUTUAL AGREEMENT PROCEDURE



REQUIREMENTS FOR A MAP REQUEST (CONT.)

- e) Identification of the legal instruments and the specific provisions which the person that submits the request considers are not being correctly applied by either one or both of the States, and identification of such State or States (indicating, where applicable and if possible, the tax administration office that has made, or is proposing to make, the adjustment, as well as the contact details of that office or of the head of that office);
- f) The analysis by the person that submits the request of the issues raised including its interpretation of the correct application of the relevant provisions (or, where the request is submitted under the Arbitration Convention, the explanation by the enterprise that submits the request of why it considers that the principles set out in Article 4 of that Convention have not been observed, and whether a penalty, even if not final, was applied). The person that submits the request must support its analysis with the relevant documentation, which may include, namely, copies of the transfer pricing documentation required by the legislation or guidance of the State that has made, or is proposing to, make the adjustment, of other documents (besides those mentioned in the following paragraph) issued by, or submitted to, the competent authority of the other State, and of correspondence exchanged with that authority;

01 INTRODUCTION

02 SCOPE OF MAPS

03 WHO CAN REQUEST A MAP

04 HOW TO INITIATE A MAP

05 PROCESSING MAPS

06 IMPLEMENTATION OF THE AGREEMENT

07 MAPS AND THE PORTUGUESE LEGISLATION

HOW TO INITIATE A MUTUAL AGREEMENT PROCEDURE



REQUIREMENTS FOR A MAP REQUEST (CONT.)

- g) Information on whether a request for a MAP was also submitted to the competent authority of the other State on the same or a similar issue, under the same legal instrument or under any other legal mechanism to resolve DTC-related disputes and, if so, indication of the dates of submission, competent authority and the office or person in charge to which the request was submitted;
- h) Information on whether the request submitted includes any question that may be considered as covered by an advance ruling, settlement agreement, Advance Pricing Arrangement or any similar proceeding (issued or that has been or is being analyzed);
- i) Detailed information regarding any administrative or judicial proceeding initiated by the person that submits the request or by any other party to the relevant dealings as well as any court or administrative decision concerning any issues covered by the MAP request;

01 INTRODUCTION

02 SCOPE OF MAPS

03 WHO CAN REQUEST A MAP

04 HOW TO INITIATE A MAP

05 PROCESSING MAPS

06 IMPLEMENTATION OF THE AGREEMENT

07 MAPS AND THE PORTUGUESE LEGISLATION

HOW TO INITIATE A MUTUAL AGREEMENT PROCEDURE



REQUIREMENTS FOR A MAP REQUEST (CONT.)

- j) A statement of the person that submits the request **confirming the accuracy and completeness of the information** and documentation supplied, as well as committing to send to the Portuguese competent authority as quickly as possible any changes to the information submitted, any new information, or any new documentation concerning the case issued by, or submitted to, the competent authorities of the other States;
- k) A statement of the person that submits the request **committing to answer as completely and quickly as possible** to all reasonable and appropriate requests made by the Portuguese competent authority and to have all relevant documentation at the disposal of the Portuguese competent authority;

01 INTRODUCTION

02 SCOPE OF MAPS

03 WHO CAN REQUEST A MAP

04 HOW TO INITIATE A MAP

05 PROCESSING MAPS

06 IMPLEMENTATION OF THE AGREEMENT

07 MAPS AND THE PORTUGUESE LEGISLATION

HOW TO INITIATE A MUTUAL AGREEMENT PROCEDURE



REQUIREMENTS FOR A MAP REQUEST (CONT.)

Where applicable, copies of the following must be attached to the request:

- i. the relevant documents issued by the competent authority of the other State, such as tax assessments, tax audit reports, or equivalent documents, concerning the actions that resulted or may result in taxation not in accordance with the relevant provisions;
- ii. the MAP requests submitted to the competent authority of the other State, on the same or any similar issue, under the same legal instrument or under any other legal mechanism to resolve DTC-related disputes, including copy of all documentation attached thereto;
- iii. any advance ruling, settlement agreement, Advance Pricing Arrangement or any similar proceeding, concerning any issue covered by the MAP request;
- iv. any court or administrative decision concerning any issue covered by the MAP request.

01 INTRODUCTION

02 SCOPE OF MAPs

03 WHO CAN REQUEST A
MAP

04 **HOW TO INITIATE
A MAP**

05 PROCESSING MAPs

06 IMPLEMENTATION OF THE
AGREEMENT

07 MAPs AND THE PORTUGUESE
LEGISLATION

HOW TO INITIATE A MUTUAL AGREEMENT PROCEDURE



REQUIREMENTS FOR A MAP REQUEST (CONT.)

Where the documents attached to the request are very large, a **summary** thereof should be submitted, whenever possible.

If possible, **copies** of the information and documentation submitted should also be supplied in electronic format.

01 INTRODUCTION

02 SCOPE OF MAPS

03 WHO CAN REQUEST A MAP

04 HOW TO INITIATE A MAP

05 PROCESSING MAPS

06 IMPLEMENTATION OF THE AGREEMENT

07 MAPS AND THE PORTUGUESE LEGISLATION

HOW TO INITIATE A MUTUAL AGREEMENT PROCEDURE



The information exchanged between the Portuguese competent authority and the competent authorities of other States is protected by the **rules on confidentiality and data protection** provided by the applicable legal instruments. All information obtained and generated within the scope of a MAP is also covered by the rules on confidentiality and data protection provided by the Portuguese legislation, namely Article 64 of the General Tax Law (*LGT, Lei Geral Tributária*).

For the purpose of Article 7(1) of the Arbitration Convention, a case will be regarded as having been submitted according to its Article 6(1) when the taxpayer provides the items referred to in subparagraphs a) to f), i) and k) of this section, the copies of the tax assessment notices, the tax audit report or the equivalent document that resulted in the alleged double taxation, as well as any specific additional information requested by the competent authority within two months upon receipt of the taxpayer's request.

FEES

No fees are charged for the submission of a MAP request.

01 INTRODUCTION

02 SCOPE OF MAPs

03 WHO CAN REQUEST A MAP

04 HOW TO INITIATE A MAP

05 PROCESSING MAPs

06 IMPLEMENTATION OF THE AGREEMENT

07 MAPs AND THE PORTUGUESE LEGISLATION

PROCESSING MUTUAL AGREEMENT PROCEDURES



- ☑ The Portuguese competent authority interprets and applies the provisions of the international legal instruments in good faith, in accordance with the terms and in the light of the object and purposes of such legal instruments.
- ☑ With a view to finding solutions for the issues concerning the application of DTC provisions whose wording is the same as the wording of the equivalent provisions of the OECD Model Tax Convention, the Portuguese competent authority takes into consideration the updated Commentary, as well as the observations and reservations presented by Portugal with regard to such provisions.
- ☑ With a view to finding solutions for the issues concerning the application of the arm's length principle, the Portuguese competent authority takes into consideration the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations.

01 INTRODUCTION

02 SCOPE OF MAPs

03 WHO CAN REQUEST A MAP

04 HOW TO INITIATE A MAP

05 PROCESSING MAPs

06 IMPLEMENTATION OF THE AGREEMENT

07 MAPs AND THE PORTUGUESE LEGISLATION

PROCESSING MUTUAL AGREEMENT PROCEDURES



- ☑ The Portuguese competent authority acknowledges the receipt of the request within **ten days** and informs the person that submits it that the request will be subject to a preliminary analysis.
- ☑ The Portuguese competent authority carries out such preliminary analysis within a period of **thirty days**, from the receipt of the request, verifying its timeliness, the legitimacy of the person that submits the request, whether the request complies with the applicable format and requirements, whether the case can be addressed within a MAP, whether the legal instruments under which the request for a MAP is submitted actually apply to the case, whether the information and documentation supplied are accurate and complete, whether the objections of the person that submits the request appear to be justified and whether the Portuguese competent authority is able to unilaterally resolve the case⁴.

⁴ Where the request is submitted under the AC, the Portuguese competent authority does not initiate the mutual agreement procedure where legal or administrative proceedings have resulted in a final ruling that by actions giving rise to an adjustment of transfers of profits under Article 4 of the AC, one of the enterprises concerned is liable to a serious penalty. For this purpose, the term “serious penalties” includes criminal penalties as well as the further tax penalties applicable to infringements committed with intent to defraud or in which the fine applicable is of an amount exceeding 4,987.98 Euro.

01 INTRODUCTION

02 SCOPE OF MAPs

03 WHO CAN REQUEST A MAP

04 HOW TO INITIATE A MAP

05 PROCESSING MAPs

06 IMPLEMENTATION OF THE AGREEMENT

07 MAPs AND THE PORTUGUESE LEGISLATION

PROCESSING MUTUAL AGREEMENT PROCEDURES



The result of such preliminary analysis is notified to the person that submits the request, who shall be informed of:

- I. The acceptance of the request, and of the unilateral resolution of the case;
- II. The acceptance of the request, and that the information and documentation submitted are sufficient to initiate the MAP;
- III. The acceptance of the request, subject to providing some information or documentation missing, in which case the person that submits the request is notified to do so within thirty days (in this situation, the request shall remain pending until the requested items are provided); or of
- IV. The non acceptance of the request, and of the justification for such result.

Within **four weeks** from the date of receipt of a MAP request (even if the request is not accepted or remains pending), the Portuguese competent authority informs the competent authority of the State to which the case may concern, providing a copy of the request and of all the documents attached thereto.

01 INTRODUCTION

02 SCOPE OF MAPs

03 WHO CAN REQUEST A MAP

04 HOW TO INITIATE A MAP

05 PROCESSING MAPs

06 IMPLEMENTATION OF THE AGREEMENT

07 MAPs AND THE PORTUGUESE LEGISLATION

PROCESSING MUTUAL AGREEMENT PROCEDURES



Where the Portuguese competent authority accepts the request for a MAP and considers that the objections of the person that submits such request appear to be justified, but it is not itself able to arrive at a satisfactory solution to resolve the case, it shall endeavour to **reach an agreement**, negotiated with the competent authority of the other State to which the case concerns, that avoids taxation not in accordance with the legal instrument which apply to the case, **within two years**.

The person that submits the request must:

- Respond as completely and quickly as possible to all reasonable and appropriate requests made by the Portuguese competent authority and have all relevant documentation at the disposal of the Portuguese competent authority;
- Send to the Portuguese competent authority as quickly as possible any changes to the information submitted, any new information, or any new documentation issued by, or submitted to, the competent authorities of the other States, concerning the case.

01 INTRODUCTION

02 SCOPE OF MAPs

03 WHO CAN REQUEST A MAP

04 HOW TO INITIATE A MAP

05 PROCESSING MAPs

06 IMPLEMENTATION OF THE AGREEMENT

07 MAPs AND THE PORTUGUESE LEGISLATION

PROCESSING MUTUAL AGREEMENT PROCEDURES



The person that submits the request may withdraw it by sending a written communication for that purpose to the Portuguese competent authority.

The Portuguese competent authority informs regularly the person that submits the request about the progress achieved within the scope of the Mutual Agreement Procedure.

In cases of double taxation, the Agreement between the competent authorities shall set the amount and form of the relief that shall be granted in each State.

01 INTRODUCTION

02 SCOPE OF MAPs

03 WHO CAN REQUEST A MAP

04 HOW TO INITIATE A MAP

05 PROCESSING MAPs

06 IMPLEMENTATION OF THE AGREEMENT

07 MAPs AND THE PORTUGUESE LEGISLATION

PROCESSING MUTUAL AGREEMENT PROCEDURES



Where the request for a MAP has been submitted under the AC and pursuant to its Article 7(1), if the competent authorities fail to reach an agreement that eliminates the double taxation within two years, an advisory commission shall be set up, which shall be charged with delivering its opinion on the elimination of the double taxation⁵. The advisory commission shall deliver its opinion not more than six months from the date on which the matter was referred to it.

The competent authorities shall, acting by common consent on the basis of Article 4 of the AC, take a decision which will eliminate the double taxation within six months of the date on which the advisory commission delivered its opinion. Such decision may deviate from the advisory commission's opinion. If the competent authorities fail to reach agreement, they shall be obliged to act in accordance with the advisory commission's opinion.

⁵ However, the advisory commission shall only be set up if the associated enterprise of Portugal has allowed the time provided for an appeal to expire, or has withdrawn any such appeal before a decision has been delivered.

01 INTRODUCTION

02 SCOPE OF MAPs

03 WHO CAN REQUEST A MAP

04 HOW TO INITIATE A MAP

05 PROCESSING MAPs

06 IMPLEMENTATION OF THE AGREEMENT

07 MAPs AND THE PORTUGUESE LEGISLATION

PROCESSING MUTUAL AGREEMENT PROCEDURES



Where the request for a MAP has been submitted under the DTC concluded between Portugal and Japan regarding a case covered by its Article 9 (Associated enterprises) and the competent authorities of Portugal and Japan are unable to reach an agreement to resolve that case within two years, any unresolved issues arising from the case shall be submitted to arbitration if the person so requests, pursuant to paragraph 5 of its Article 24 (Mutual Agreement Procedure)⁶.

⁶ However, these unresolved issues shall not be submitted to arbitration if a decision on these issues has already been rendered by a court or administrative tribunal of either Contracting State.

01 INTRODUCTION

02 SCOPE OF MAPs

03 WHO CAN REQUEST A MAP

04 HOW TO INITIATE A MAP

05 PROCESSING MAPs

06 IMPLEMENTATION OF MAPs

07 MAPs AND THE PORTUGUESE LEGISLATION

IMPLEMENTATION OF THE AGREEMENT REACHED UNDER A MAP



Before reaching a final resolution of the case with the competent authorities of the other States, the Portuguese competent authority notifies the terms and conditions of the Agreement to the person that submitted the MAP request, so that that this person declares **within 30 days** whether it accepts them as a final resolution of the case. The acceptance of the Agreement reached under a MAP by the person that submitted the request obliges it to withdraw any pending cases in the judicial or administrative instances.

If the person that submitted the request does not accept the terms and conditions of such Agreement within the time limit referred to in the preceding paragraph, the Portuguese competent authority shall send the competent authority of the other State a proposal to close the MAP case without agreement.

After the acceptance of the Agreement reached under a MAP by the person that submitted the request, the Portuguese competent authority confirms the Agreement, in writing, with the competent authority of the other State.

01 INTRODUCTION

02 SCOPE OF MAPS

03 WHO CAN REQUEST A MAP

04 HOW TO INITIATE A MAP

05 PROCESSING MAPS

06 IMPLEMENTATION OF MAPS

07 MAPS AND THE PORTUGUESE LEGISLATION

IMPLEMENTATION OF THE AGREEMENT REACHED UNDER A MAP



Any agreement reached under a MAP shall be implemented notwithstanding any time limits in the domestic law of the Contracting States, where such agreement is concluded under a DTC that so provides⁷ or under the AC.

The Portuguese competent authority promotes the swift implementation of the Agreements reached with the competent authorities of the other States under a MAP. In what concerns transfer pricing cases, the Portuguese competent authority promotes the implementation of appropriate adjustments to the tax assessed within a period of 120 days (Ministerial Order 1446-C/2001, Article 20(2)).

The Portuguese competent authority informs the person that submitted the MAP request about the implementation of the Agreement reached under the MAP.

⁷ The following DTCs concluded by Portugal do not include such provision: Algeria, Austria, Belgium, Cabo Verde, Canada, Finland, France, Germany, Greece, Hungary, Iceland, Indonesia, Ireland, Italy, Korea, Luxembourg, Mexico, Mozambique, Singapore, Spain, Switzerland, Tunisia, United Kingdom and Venezuela.

01 INTRODUCTION

02 SCOPE OF MAPS

03 WHO CAN REQUEST A MAP

04 HOW TO INITIATE A MAP

05 PROCESSING MAPS

06 IMPLEMENTATION OF THE AGREEMENT

07 MAPS AND THE PORTUGUESE LEGISLATION

THE MUTUAL AGREEMENT PROCEDURE AND THE PORTUGUESE LEGISLATION



MONITORING COMPLIANCE AND TAX AUDITS

The Mutual Agreement Procedure is totally independent from the procedures to monitor compliance and tax audits.

It is possible to request a MAP where the double taxation results from adjustments made under a procedure to monitor compliance or a tax audit to which the taxpayer has not made any objection or which the taxpayer has voluntarily settled.

ADMINISTRATIVE AND JUDICIAL PROCEEDINGS PROVIDED FOR IN THE PORTUGUESE LEGISLATION

The submission of a MAP request is not impaired by the initiation of any judicial proceedings or administrative appeals nor prevents the normal processing of judicial cases or any administrative procedures for the application of penalties.

01 INTRODUCTION

02 SCOPE OF MAPs

03 WHO CAN REQUEST A MAP

04 HOW TO INITIATE A MAP

05 PROCESSING MAPs

06 IMPLEMENTATION OF THE AGREEMENT

07 MAPs AND THE PORTUGUESE LEGISLATION

THE MUTUAL AGREEMENT PROCEDURE AND THE PORTUGUESE LEGISLATION



ADMINISTRATIVE AND JUDICIAL PROCEEDINGS PROVIDED FOR IN THE PORTUGUESE LEGISLATION (CONT.)

However, as mentioned above, if any administrative or judicial proceeding has been initiated, whether in Portugal or in other States, the person that submits the MAP request must inform the Portuguese competent authority of such proceedings, indicating whether there is already any court or administrative decision concerning the issues covered by the MAP request.

Where an agreement is reached under a MAP prior to a final judicial or administrative decision, the implementation of such agreement shall be subject to the withdrawal, by the person that submitted the MAP request, of any pending cases in the judicial or administrative instances.

01 INTRODUCTION

02 SCOPE OF MAPS

03 WHO CAN REQUEST A MAP

04 HOW TO INITIATE A MAP

05 PROCESSING MAPS

06 IMPLEMENTATION OF THE AGREEMENT

07 MAPS AND THE PORTUGUESE LEGISLATION

THE MUTUAL AGREEMENT PROCEDURE AND THE PORTUGUESE LEGISLATION

ADMINISTRATIVE AND JUDICIAL PROCEEDINGS PROVIDED FOR IN THE PORTUGUESE LEGISLATION (CONT.)

The Portuguese competent authority is bound by the judicial decisions. Where a judicial decision concerning any issue covered by a MAP request becomes final before the conclusion of the MAP, the Portuguese competent authority shall inform the competent authority of the other State about such decision and that it is bound by it.

The Portuguese competent authority shall also request the competent authority of the other State to consider taking the necessary measures, as far as it finds possible, in order to avoid the double taxation not in accordance with the legal instruments which apply to the case.

Where the request for a MAP has been submitted **under the AC**, the Portuguese competent authority shall refuse the mutual agreement procedure where legal or administrative proceedings have resulted in a final ruling that by actions giving rise to an adjustment of transfers of profits under Article 4 of the AC, one of the enterprises concerned is liable to a **serious penalty**⁸.

⁸ For this purpose, the term “serious penalties” includes criminal penalties as well as the further tax penalties applicable to infringements committed with intent to defraud or in which the fine applicable is of an amount exceeding 4,987.98 Euro.

01 INTRODUCTION

02 SCOPE OF MAPs

03 WHO CAN REQUEST A MAP

04 HOW TO INITIATE A MAP

05 PROCESSING MAPs

06 IMPLEMENTATION OF THE AGREEMENT

07 MAPs AND THE PORTUGUESE LEGISLATION

THE MUTUAL AGREEMENT PROCEDURE AND THE PORTUGUESE LEGISLATION



INTEREST AND OTHER PENALTIES

The Mutual Agreement Procedure does not cover interest and other penalties (namely deriving from adjustments that have resulted in double taxation).

TAX COLLECTION

The possibility of suspension of tax collection or foreclosure is provided for in Article 52 of the General Tax Law (LGT) and in Article 169 of the Code of Tax Process and Proceedings (CPPT) under the terms and conditions set thereof.

01 INTRODUCTION

02 SCOPE OF MAPs

03 WHO CAN REQUEST A MAP

04 HOW TO INITIATE A MAP

05 PROCESSING MAPs

06 IMPLEMENTATION OF THE AGREEMENT

07 MAPs AND THE PORTUGUESE LEGISLATION



FOR MORE INFORMATION

Please see the *Portal das Finanças* (www.portaldasfinancas.gov.pt):

- [Bilateral Conventions](#) for the Avoidance of Double Taxation with respect to Taxes on Income and on Capital;
- The webpage [Tax System in Portugal](#)

Contacts of the Portuguese Tax and Customs Authority:

- [Telephone Assistance Center](#) (CAT) on +351 217 206 707, every working day from 9:00 a.m. to 7:00 p.m. (Lisbon time);
- [e-balcão](#) (e-desk) for on-line assistance.