

Forum on Implementation of Measures to Counter Base Erosion and Profit Shifting (BEPS)



Intra-European Organisation of Tax Administrations (IOTA)

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Mutual Agreement Procedure: Various issues affecting the tax dispute process

Country presentation - Italy

Ensure access to MAP(s): issues and possible solutions

21 May 2025

DEFINITIONS

« CA »	Competent Authority
« MAP »	Mutual Agreement Procedure
« OECD Model »	OECD (Organization for Economic Cooperation and Development) Model Tax Convention on Income and on Capital
« DTC »	Bilateral Tax treaty (Convention) for the avoidance of double taxation
« EAC »	Convention 90/436/EEC of 23 July 1990 on the elimination of double taxation in connection with the adjustments of profits of associated enterprises
« DRM (EU) Directive »	Council Directive (EU) 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the European Union

(TABLE OF) CONTENTS

❑ INTRODUCTION

- Access to the MAP(s): legal basis and requirements

❑ ACCESS TO THE MAP(S): ISSUES AND POSSIBLE SOLUTIONS

- Link with domestic litigation
- ✓ The Italian clause
- ✓ Settlement between the Italian tax authority and the taxpayer(s)
- Other issues
- ✓ MAP under the DRM(EU) Directive; refund; suspension of collection; self-adjustment

❑ CONCLUSIONS

INTRODUCTION - ACCESS TO THE MAP(S)

❑ LEGAL BASIS

- OECD Model - Article 25
- EAC - Article 6
- DRM (EU) Directive - Article 3

❑ REQUIREMENTS

- Action(s) of the Contracting State(s) → (double) taxation not in accordance with the provisions of the legal base applied
- Taxpayer(s) request within a specific time limit from the first notification of the action above
- Other - provided by the legal base applied and/or the domestic law of the Contracting State(s)

ACCESS TO THE MAP(S)-LINK WITH DOMESTIC LITIGATION-1

- ❑ **General clause** provided by the OECD Model, EAC and DRM (EU) Directive
 - MAP request by the taxpayer(s) «*irrespective of the remedies provided by the domestic law*» of the Contracting State(s)

- ❑ Interpretation of the general clause: the **Italian clause***
 - **Priority** of the domestic litigation («*national contentious procedure*») over the MAP
**included in many of the DTC(s) signed by Italy*

- ❑ **Reason(s)** behind the Italian interpretation
 - **Avoid** that, pending the MAP, the **taxes** levied in Italy (*i.e.* in case of an Italian action leading to non-complaint double taxation) become **permanent** and, therefore, **non-amendable** pursuant to the eventual agreement reached between the CAs involved

ACCESS TO THE MAP(S)-LINK WITH DOMESTIC LITIGATION-2

Effects and impacts

❑ Access denied

- absence of previous domestic litigation*
- existence of a final judgment (*res iudicata*)**

** not applicable to MAP(s) under the EAC and the DRM (EU) Directive*

*** the Italian CA cannot derogate from decision(s) of the tax court*

❑ **Waiver** of the judicial remedy as **necessary condition** for the implementation of the eventual agreement reached between the CAs involved, together with the acceptance of its contents by the taxpayer(s)

ACCESS TO THE MAP(S)-LINK WITH DOMESTIC LITIGATION-3

(Follows)

- ❑ Existence of a domestic litigation does not preclude *i)* the **initiation of the MAP**; *ii)* **contacts, exchange of information and reciprocal positions** between the CAs involved
- ❑ Chance to request the **suspension of the domestic litigation**, in order to avoid the issue of a judgment that could affect the outcome of the ongoing MAP

❑ **Settlement** between the Italian tax administration (local Office of the Revenue Agency) and the taxpayer reached before the MAP request (*typically, during a tax audit*):

- ensured access to the MAP
- allowed exchange of information between the CAs involved

however

ACCESS TO THE MAP(S)-LINK WITH DOMESTIC LITIGATION-4

(Follows)

❑ Italian internal limitation to the next step:

➤ the Italian CA **cannot deviate from the settlement** reached with the taxpayer(s)
therefore

➤ the Italian CA cannot carry out any negotiation and/or revision of the Italian taxes paid

and

➤ the MAP may potentially lead **only** to a **corresponding adjustment/unilateral relief** by the other CA(s) involved (adequately informed by the Italian CA)

NB *the limit on the negotiation of the taxes settled is overcome in case of MAP(s) under the DRM (EU) Directive*

ACCESS TO THE MAP(S) - OTHER ISSUES

- ❑ MAP(s) under the DRM (EU) Directive
 - **Simultaneous** submission
 - Complaint's **language**
- ❑ **Refund**: time limits provided by the domestic law; priority of the refund request over the MAP application
- ❑ Provision of procedures of **suspension of taxes collection** while the MAP is pending
- ❑ **Self-adjustment** to the outcome of a previous tax audit made by the taxpayer independently of any action by a Contracting State

CONCLUSIONS

The Italian CA is committed on a daily basis to ensure dispute prevention, MAP(s) access and resolution and implementation of related agreements, in a timely, effective and efficient manner

THANK YOU

