



APA & MAP Country Guide 2019 – Netherlands

CONNECTING THE DOTS OF INTERNATIONAL TAX CONTROVERSY



Netherlands

APA Program

KEY FEATURES	
Competent authority	APA/Advance Tax Ruling (ATR) team of the Dutch Tax Authority (APA/ATR team)
Relevant provisions	Decree DGB 2014/3098 regarding the APA application procedure; and Decree DGB 2014/296M regarding the organisational and competence aspects of the APA/ATR practices.
Types of APAs available	Unilateral, bilateral, and multilateral APAs are available.
Acceptance criteria	<p>The Netherlands provide APAs only if either:</p> <ul style="list-style-type: none"> • the Taxpayer or relevant parties conduct operational activities in the Netherlands, or can prove they have plans to do so; or • the Taxpayer meets specified minimum substance and real risk requirements for intermediary holding companies and intergroup financing, licensing, and leasing companies. <p>As of July 2019, rulings (APAs and ATRs) will only be granted if the Taxpayer has 'economic nexus' with the Netherlands. In practice, this will mean that operational activities in the Netherlands (or the plans to bring these to the Netherlands) will be required for a ruling. Meeting a list of substance requirements will no longer be enough.</p>

Key timing requests, deadlines	There is no specific guidance. The critical dates negotiated with the APA/ATR team at the pre-filing meeting will determine the date from which the APA will commence.
APA term limits	There is a five-year maximum term for an APA, although longer terms may be possible if the Taxpayer's circumstances involve long term contracts.
Filing fee	There is no filing fee.
Rollback availability	Rollbacks are available if the facts and circumstances in prior years are comparable to those in the APA application, or if accurate adjustments can be made to the relevant prior years. For unilateral APA requests, rollback is available in case the rollback does not result in a decrease of taxable profits of still open years. For bilateral and multilateral APAs, the foreign tax authorities should agree with the rollback.
Collateral issues	No specific guidance.

PRE-FILING REQUIREMENTS

Overview	Pre-filing meetings with the APA/ATR team are available, which provide the Taxpayer with the opportunity to obtain clarity on the documentation requirements and essential elements for a successful APA application. A joint case management plan can also be prepared in collaboration with the APA/ATR team, outlining the formal APA negotiation process and the anticipated timeline between formal filing and completion.
Anonymous pre-filing availability	Anonymous pre-filing is available.

APPLICATION REQUIREMENTS

<p>Content of application</p>	<p>The APA/ATR team generally require the following information to be submitted in an APA application:</p> <ul style="list-style-type: none"> • the names and addresses of the entities involved; • the transactions, products, businesses or arrangements to be covered; • a description of the enterprises and or PE's involved in the transactions/agreements; • the relevant foreign tax authorities involved; • the global organizational structure, history, financial statement data, products, functions (including risks assumed) and assets (tangible and intangible) of the enterprises involved; • a description of the proposed TP method, including a comparability analysis ; • critical assumptions underpinning the APA application and a discussion of the effect of changes in those assumptions or other events; • the accounting period or fiscal years to be covered; and • a description of market conditions including industry trends and competitive environment.
<p>Language</p>	<p>The documentation should be submitted in Dutch or English.</p>

SME provisions	<p>A process designed to accommodate small businesses and specific support from the APA/ATR team for providing comparable data on independent enterprises is available for Taxpayers that meet the following requirements:</p> <ul style="list-style-type: none"> • the value of assets is not more than EUR6 million (approx. USD7 million); • the net turnover for the financial year does not exceed EUR12 million (approx. USD14.1 million); and • the average number of employees for the financial year is less than 50 (not available for entities engaging in financial service activities without a real economic presence in the Netherlands).
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OTHER PROCEDURAL CONSIDERATIONS

General	The APA/ATR team follows a standard pre-filing, application and monitoring process. There are no unique procedural aspects.
Monitoring & compliance	The Taxpayer is required to indicate that they have obtained an APA in their tax return. Annual compliance reports are not required. Periodic audits by the APA/ATR team may take place to ensure compliance with critical assumptions included in the APA.
Renewal procedure	At the request of the Taxpayer, it can be evaluated whether a new APA can be concluded under the same conditions as those of an existing APA.

MAP Program

KEY FEATURES

Competent authority	Directorate of Fiscal Affairs of the Ministry of Finance (Tax authorities)
Relevant provisions	MAP Decree dated September 29, 2008, No. IFZ2008/248M (the Decree)
Acceptance criteria	Taxpayers may request a MAP if taxation has or is likely to occur that is not in accordance with the provisions of a DTT to which the Netherlands is signatory.
Key timing requests, deadlines	Taxpayers have three years to present a case to the Tax authorities under the EU Arbitration Convention (90/436/EEC).

APPLICATION REQUIREMENTS

Content of application	<p>A request for a MAP does not have a set form; however, according to the Decree, a written request should at least contain the following information:</p> <ul style="list-style-type: none"> • the name, address and identification number of the Taxpayer as well as those of any related foreign Taxpayer involved; • information on the relevant facts and circumstances of the issues for which the MAP is requested, including on the relationship between the Taxpayer and foreign related parties involved; • the other relevant jurisdiction(s) involved in the request;
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(cont.)	<ul style="list-style-type: none">• the DTT and relevant article(s), (or article 4 of the EU Arbitration Convention), that the Taxpayer asserts is not being correctly applied, and the Taxpayer's interpretation of the application of these articles;• the taxation years or periods involved;• the relevant foreign jurisdiction(s) involved;• copies of the tax assessment notices, tax audit report or equivalent leading to the alleged double taxation;• details of any appeals and litigation procedures initiated by the Taxpayer or the other parties to the relevant transactions and any court decisions concerning the case; and• an undertaking that the Taxpayer will respond as completely and quickly as possible to all reasonable and appropriate requests made by a tax authority and have documentation at the disposal of the tax authorities.
Language	The documentation should be submitted in Dutch or English.

OTHER PROCEDURAL CONSIDERATIONS

<p>Interaction with domestic proceedings</p>	<p>Taxpayers may pursue Dutch domestic legal proceedings separately from MAP.</p>
<p>Arbitration</p>	<p>As the Netherlands is a member of the EU, Taxpayers may initiate the arbitration procedure under the Tax Dispute Resolution Mechanism Directive on October 10, 2017. The Dutch Government has published a proposal to implement the Directive, with implementation taking effect on July 1, 2019 and applying to any disputes concerning financial years that started on or after January 1, 2018. The EU Arbitration Convention also imposes a binding obligation on EU member states to eliminate double taxation under DTTs including, if necessary, by reference to the opinion of an independent advisory body.</p> <p>The Netherlands has also opted-in for arbitration under the MLI. The MLI is expected to take effect for the Netherlands on January 1, 2020.</p>

STATISTICS

<p>APA</p>	<p>There were 221 APA application requests in 2017 and 132 completed applications. The average completion time was 24 months for bilateral and multilateral APAs. The APA/ATR team has had an APA program since 1994 based on a decree dated October 19, 1994, no IFZ94/855, although the decree was primarily for APA procedures in relation to the US. The APA/ATR team issues OECD conform rulings as of April 1, 2001.</p>
<p>MAP</p>	<p>The Netherlands had a total of 297 active MAP applications as of December 31, 2016. The average time needed to close MAP cases is 37 months for transfer pricing cases, and 25 months for other cases.</p>

Double Taxation Treaty Network

The following treaties include MAP provisions which are the basis for bilateral and multilateral APA negotiations:

Albania ⁽ⁱ⁾	Czech Republic	Japan ⁽ⁱ⁾	Oman	Surinam
Argentina	Denmark	Jordan ⁽ⁱⁱ⁾	Pakistan	Taipei ⁽ⁱⁱⁱ⁾
Armenia	Egypt ⁽ⁱ⁾	Kazakhstan	Panama	Thailand
Australia	Estonia ⁽ⁱ⁾	Korea	Philippines	Tunisia
Austria	Ethiopia ^(iv)	Kosovo	Poland ⁽ⁱ⁾	Turkey
Azerbaijan	Finland	Kuwait ⁽ⁱ⁾	Portugal ^(v)	Uganda ⁽ⁱ⁾
Bahrain ⁽ⁱ⁾	France	Latvia ⁽ⁱ⁾	Qatar ⁽ⁱ⁾	Ukraine ⁽ⁱ⁾
Bangladesh	Georgia ⁽ⁱ⁾	Lithuania ⁽ⁱ⁾	Romania	United Arab
Barbados ⁽ⁱ⁾	Germany ⁽ⁱ⁾	Luxembourg	Russia	Emirates ⁽ⁱ⁾
Belarus	Ghana ⁽ⁱ⁾	Macedonia ⁽ⁱ⁾	Saudi Arabia	United
Belgium	Greece	Malaysia	Serbia	Kingdom ⁽ⁱ⁾
Bermuda ⁽ⁱ⁾	Hong Kong ⁽ⁱ⁾	Malta	Singapore	United States
Bosnia- Herzegovina	Hungary	Mexico	Slovakia	Uzbekistan ⁽ⁱ⁾
Brazil	Iceland	Moldova ⁽ⁱ⁾	Slovenia ⁽ⁱ⁾	Venezuela
Bulgaria	India	Montenegro	South Africa ⁽ⁱ⁾	Vietnam
Canada ⁽ⁱ⁾	Indonesia	Morocco	Spain ^(vi)	Zambia
China ^(vii)	Ireland	New Zealand	Sri Lanka	Zimbabwe
Croatia	Israel	Nigeria	Sweden	
	Italy	Norway ⁽ⁱ⁾	Switzerland ⁽ⁱ⁾	

Notes

- i. denotes treaties with MAP arbitration provisions. (I* denotes treaties to which MAP arbitration provisions under the MLI apply)
- ii. denotes treaties with the USSR that remain applicable until a separate tax treaty is concluded.
- iii. denotes treaties between the countries' representative office in Taipei and the Taipei Economic and Cultural Office in the relevant country.
- iv. denotes treaties that became effective within the last five years.
- v. denotes treaties that are awaiting ratification.
- vi. denotes MAP provisions identical to para 3, art 25 of the OECD Model Convention with respect to Taxes on Income and on Capital.
- vii. arbitration is to be conducted under the statutes of the ECJ.
- viii. arbitration is to be conducted under the statutes of the ICJ.

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