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MEMAP 2026 in Practice: What's New, How MAP Works, and Illustrative Case Examples

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Introduction

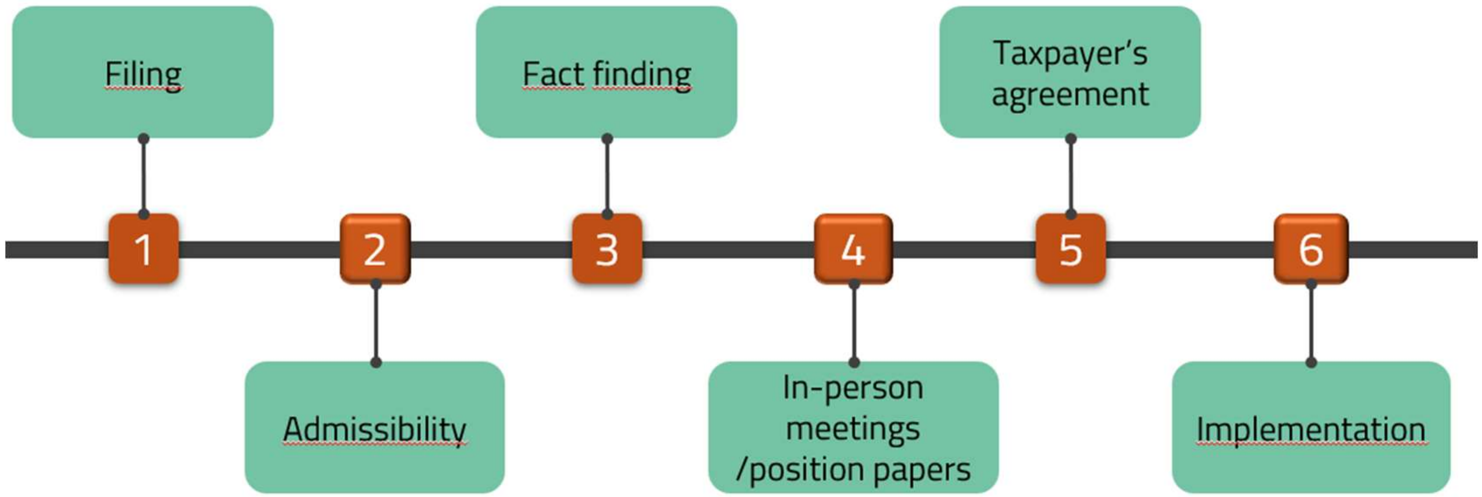
Introduction

- MEMAP: Manual on Effective Mutual Agreement Procedures
- What is a Mutual Agreement Procedure? E.g. article 25 OECD Model Convention:

1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of either Contracting State. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Convention.
2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with the Convention. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting States.
3. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Convention. They may also consult together for the elimination of double taxation in cases not provided for in the Convention.

Introduction

- MEMAP: Manual on Effective Mutual Agreement Procedures
- What is a mutual agreement procedure?



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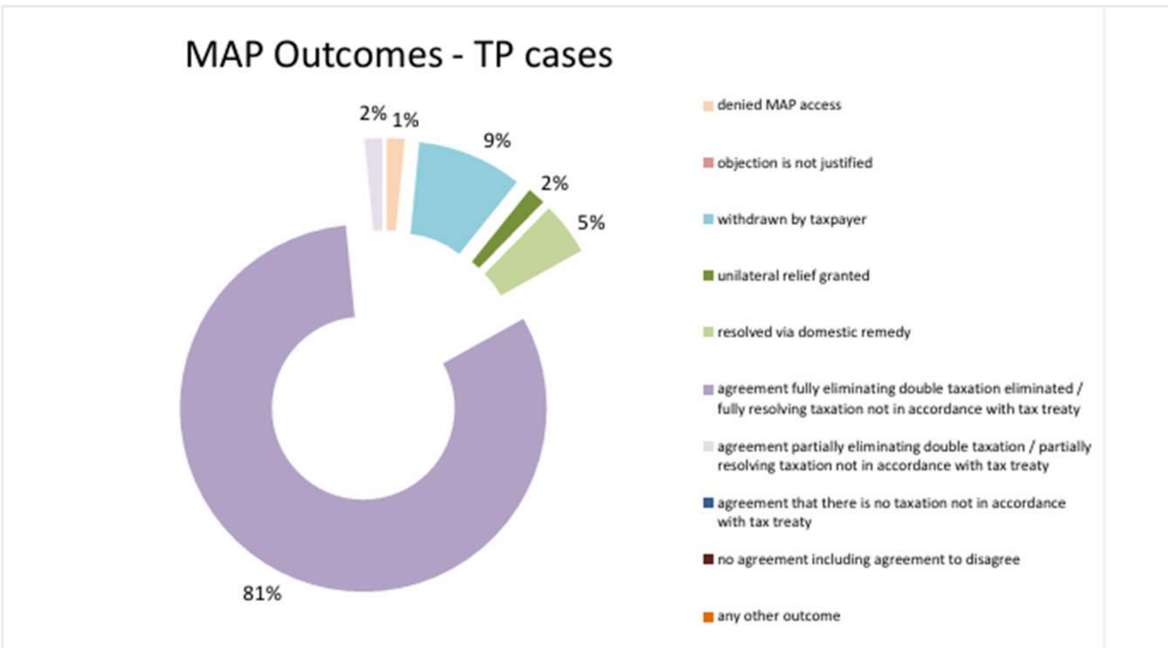
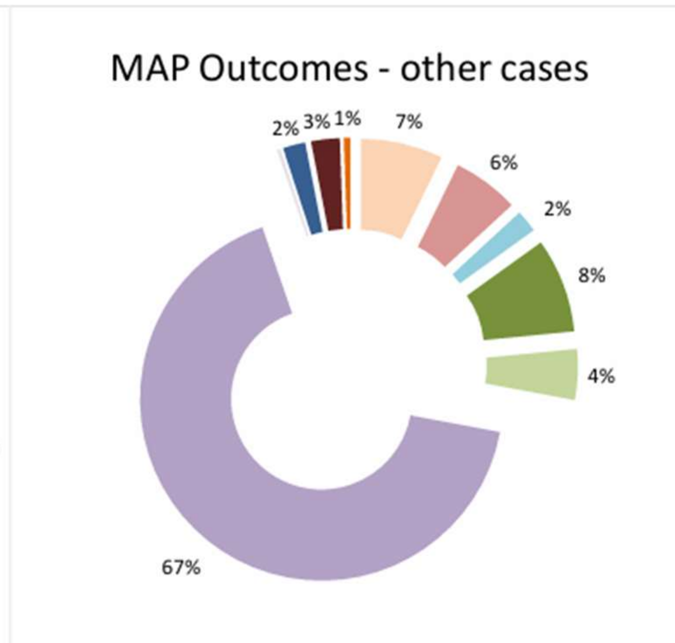
How effective are the Mutual Agreement Procedures in Belgium?

- Mutual Agreement Procedure Statistics per jurisdiction – Belgium
- Making Dispute Resolution More Effective – Full Peer Review, Belgium (Cycle 1) (EN)

Introduction





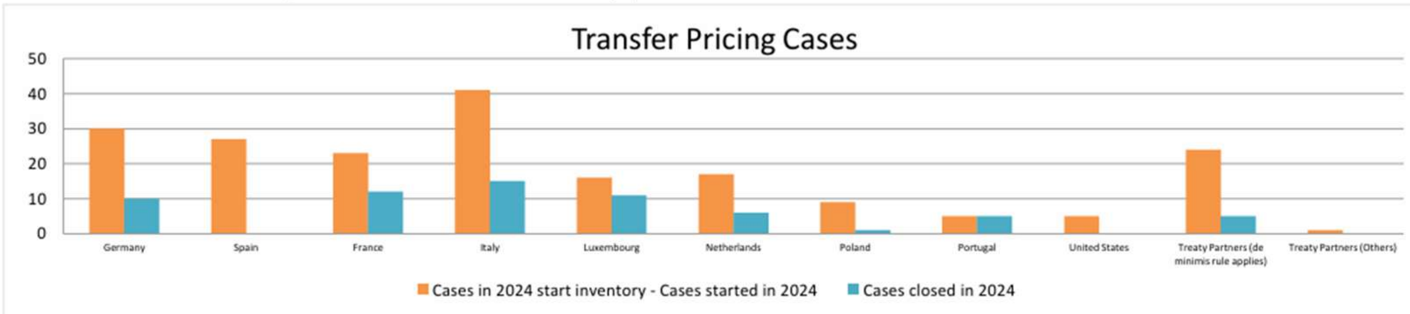
Introduction

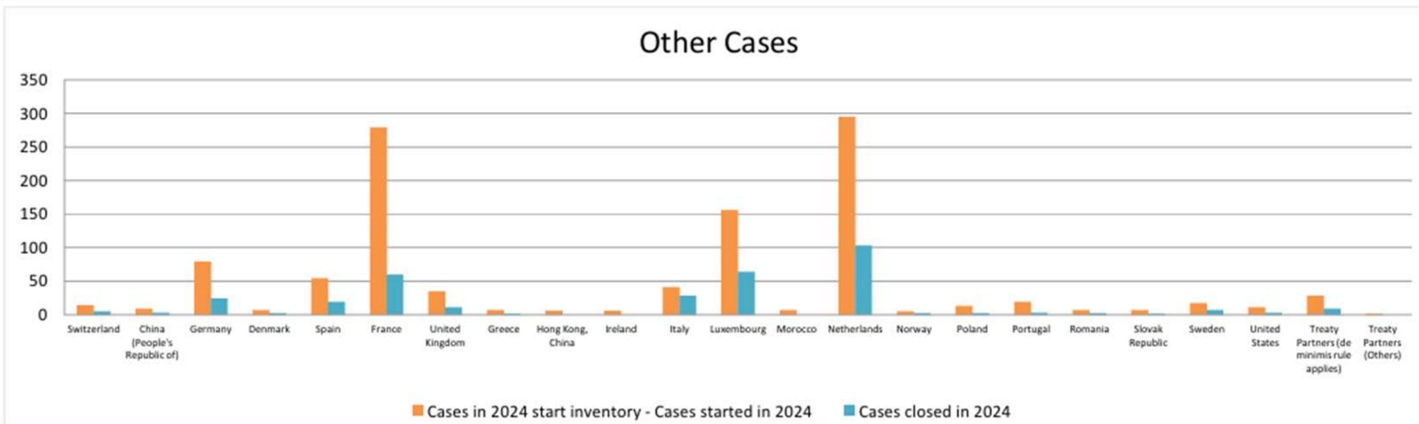
2018-23	Opening Inventory 1/1/2018	Cases started	Cases closed	End Inventory 31/12/2023	Average time to close cases (in months)
Attribution/allocation cases	83	315	253	146	27.24
Other cases	672	2539	2470	741	19.25
Total	755	2854	2723	887	19.98

Introduction

Overview of MAP partners (only for cases started as from 1 January 2016)

Note: the MAP cases started before 1 January 2016 and closed in 2024 are not shown in these graphs





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OECD MEMAP 2026 : Key Innovations Compared to the 2007 Edition

New MEMAP

- MEMAP: Manual on Effective Mutual Agreement Procedures
- First revision since 2007 by the FTA MAP Forum
- It reflects/incorporates
  - BEPS Action 14
  - Stakeholder input
  - Current practices and experiences
- Focus on non-binding Best Practices

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Modern Practices and BEPS14 Integrated

- Incorporates minimum standards
- Digital submissions
- Map Statistics
- TP trends
- Anti-abuses issues
- Includes peer-review lessons
- Emphasis **dispute prevention**
- Arbitration

Theme	MEMAP 2007	MEMAP 2026
Best practices	25 best practices	59 best practices
MAP access rules	General principles	Clear, strict access guarantees; anti-abuse ≠ refusal
Arbitration	Minimal	Detailed guidance for the first time
Structure	Thematic	Process-based (phases of MAP)
BEPS Action 14 integration	Not applicable	Fully integrated standards and peer-review lessons
Tools and templates	None	Templates for MAP request, position papers, closing letters
Competent authority conduct	Less developed	"Solution-oriented" mindset, independence from audit
Digitalisation / statistics	Limited	Fully incorporated in the new edition

New MEMAP

Added value for Belgium:
- Guide on MAPS
- Guidance on certain issues
- Guidance on procedural requirements

New MEMAP

Structure:

- Background and Pre-MAP
- Unilateral Phase
- Bilateral Phase
- Arbitration (part of bilateral phase)
- Considerations for low-capacity jurisdictions

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Background and pre-MAP Phase

New MEMAP

Structure:

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Not only dispute resolution

The MAP team can play a role in dispute prevention (Best practice 6):

- APA's
- Interpretative MAP based on article 25 (3): *3. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Convention. They may also consult together for the elimination of double taxation in cases not provided for in the Convention.*
- Multi-year resolution of recurring issues

However, also a role for the audit functions (Best practice 5):

- Audits with well-reasoned conclusions
- Improved communication with taxpayers
- Asking for all the necessary information early

Feedback between audit/examination and competent authority functions

Solution-Oriented Competent Authorities

Best practices 7-11 focus on how the Competent Authority should function, e.g.:

- Appropriate structure
- Independence from audit functions
- Pragmatic and Treaty-focused approach
- Avoid re-performing audits
- Solution-oriented
- No performance evaluation based on revenue sustained (in line with Action 14 Minimum standard).

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Solution-Oriented Competent Authorities

- A dedicated MAP/APA-team
  - Part of the international relations department, which is led by Ms. Wendy Roelandt
  - Team Leader: Georges Prignon
- TP Cases: 1 supervisor, 2 case handlers, Team Leader
- Other cases: 3 supervisors, 14 case handlers
- No performance evaluation based on revenue sustained (in line with Action 14 Minimum standard).

Solution-Oriented Competent Authorities

"Belgium's competent authority operates fully independently from the audit function of the tax authorities and adopts a pragmatic approach to resolve MAP cases in an effective and efficient manner. Its organisation is adequate and the performance indicators used are appropriate to perform the MAP function. "

Role of the taxpayer?

- Taxpayers are expected to support the process by sharing accurate and complete information early on
- MEMAP stresses the need of cooperation by the taxpayer already in the audit stage

Role of the taxpayer?

- Best practice 19:
  - keep taxpayer informed but not on the substance of the discussions
  - Joint clarification of facts is possible
- Wet betreffende de openbaarheid van bestuur / Loi relatif à la publicité de l'administration?

Best practice 3. Jurisdictions should ensure that all information necessary to consider and resolve a case is exchanged between competent authorities and that such exchanges of information during the MAP process comply with the standards set out in the equivalent of **Article 26 of the OECD Model Tax Convention**, as interpreted in the Commentary on that provision. In this regard, information may be disclosed to any person or authority concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to the taxes covered, including courts and administrative bodies. In the context of MAP, while the taxpayer should be updated on the progress of the case on request and informed of the final proposed resolution agreed between the competent authorities, **communications from one competent authority intended solely for the other competent authority as part of the MAP case, including those setting out the competent authority position such as position papers, should not be disclosed to the taxpayer.**

Where disclosure to persons or authorities is permitted under Article 26(2), and particularly where the information may be considered sensitive or relates to the MAP discussions themselves, the competent authority **concerned should consult with the other competent authority and take their view on board prior to disclosure. Information should not be disclosed to any other person or in any other circumstance beyond those listed above, regardless of any domestic information disclosure legislation, such as freedom of information laws or other provisions allowing broader access to government-held documents**.

Other parts of « Background and pre-MAP phase »

- Types of cases covered in MAP
- Timeline for MAP, monitoring of MAP Inventory and reporting MAP statistics
- Pre-MAP Consultations
- Published information on MAP:
  - Circulaire 2018/C/27 (MAP) and Circulaire 2023/C/95 (DRM)
  - 126-onderling-overleg-apa-faq.pdf
  - Belgium Dispute Resolution Country Profile
  - Belgium - MLI Arbitration Profile

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Unilateral phase

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New MEMAP

Structure:

- Background and Pre-MAP
- **Unilateral Phase**
- Bilateral Phase
- Arbitration (part of bilateral phase)
- Considerations for low-capacity jurisdictions

Unilateral Phase

Step 1: Submission of a MAP request (« Filing »)
Step 2: Checking the eligibility of a MAP request
Step 3: Determination whether the objection is justified
Step 4: Unilateral relief

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Unilateral Phase

Step 1: Submission of a MAP request (« Filing »)
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Filing

1. Where a person considers that the **actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Convention**, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of either Contracting State. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Convention.

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Filing – Where?

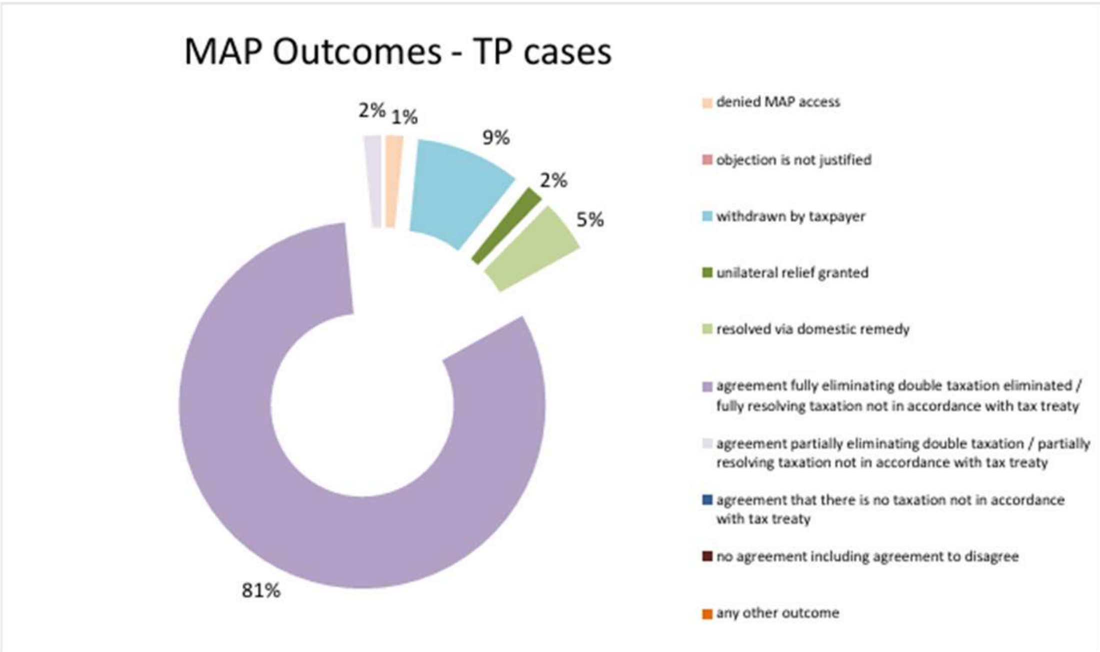
1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic law of those States, **present his case to the competent authority of either Contracting State**. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Convention.

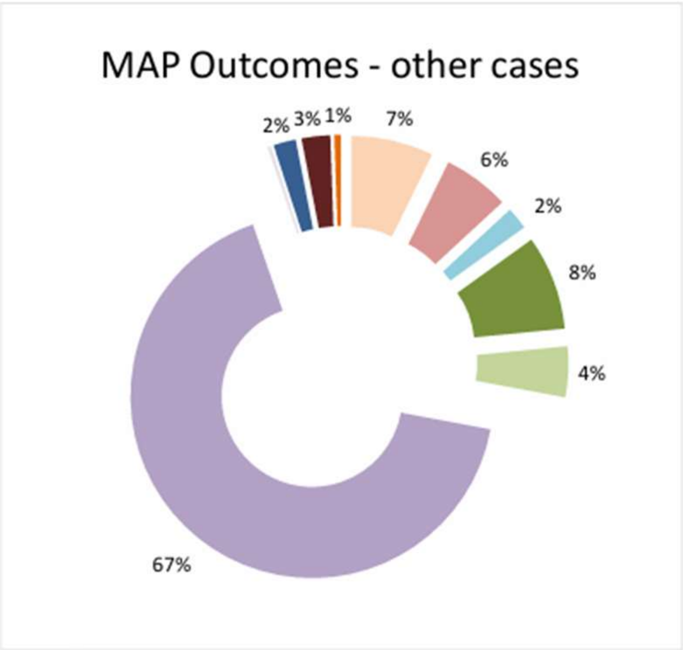
Filing – Where?

MEMAP Best Practice 23:

Business taxpayers should provide a MAP request to both jurisdictions concerned, either by having enterprises resident in each jurisdiction formally submitting it before each competent authority or by having only one MAP request submitted formally to the competent authority of the taxpayer's state of residence as required under the treaty, while providing a copy to the other, so as to ensure that both competent authorities receive the same or substantially similar information and documentation. In this regard, business taxpayers should also consider providing checklists that demonstrate how the information provided corresponds to the information requirements in both jurisdictions. Business taxpayers represented by advisors should also clearly inform the competent authorities of the identity of their representatives in each relevant jurisdiction.

Filing – Where? - Example





Filing – Where? - Example

Where to introduce the request in case of a residence conflict:

- Treaties fully in line with the OECD Model Convention: taxpayer can choose – however, see MEMAP Best practice 23
- Older treaties: state of residence?
- What if the taxation in the second residence state is not yet finalized?

Filing – how?

- By email/post:
  - FPS Finance - General Tax Administration – Central Services - International Relations – North Galaxy – Tower A 23 Koning Albert II-laan 33 PO box 515 1030 BRUSSELS (Belgium) map.apa@minfin.fed.be
- Mandate (except lawyers)
- No standard form – key information is required – see Circular Letter
- Language
- Administrative appeal?
- Protective MAP ?

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Filing – Time limit

1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of either Contracting State. **The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Convention.**

Filing – Time limit

Best practice 22. **Taxpayers should submit MAP requests as soon as possible** for them after receiving notification of an action they believe results or will result in taxation not in accordance with the tax treaty, rather than waiting until the end of the prescribed filing period. In this regard, taxpayers should provide all necessary information, especially in complex cases where additional context may aid faster resolution and provide translations of relevant documentation where useful to facilitate efficient processing.

Filing – Time limit - Example

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Best practice 28. Jurisdictions should ensure that where there is ambiguity, the time limit for filing a MAP request is interpreted in a manner that is favourable to the taxpayer, balancing the competent authority's need for reasonable limitations with the taxpayer's entitlement to treaty benefits in eligible cases. In case of ambiguity, taxpayers should not be unduly prevented from accessing MAP due to overly strict interpretations of time limits where there is room for an interpretation favourable to the taxpayer in appropriate circumstances. **In borderline cases, the benefit of the doubt should be given to the taxpayer to ensure fair and effective access to MAP.**

Admissibility Review

- Eligibility (Timeliness, Correct CA)
- Treaty-based relevance (taxation not in accordance with tax treaty)
- Clear identification
- Completeness

Admissibility Review

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In MEMAP, these are two distinct steps:

Step 2: Checking the eligibility of a MAP request

Step 3: Determination whether the objection is justified

1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of either Contracting State. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Convention.

2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with the Convention. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting States.

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Step 2: Checking the eligibility of a MAP request

- Acces must be granted in all eligible cases
- Eligibility should be distincted from determination whether objection is justified
- Only 3 valid refusal grounds according to the MEMAP:
  - Not by the appropriate taxpayer or under a tax treaty in force
  - Not to the appropriate competent authority (cf. infra)
  - Not filed within the time limits (cf. infra)
- No valid reasons
  - Anti-abuse provision (domestic or treaty)
  - Criminal sanctions (unrelated cases) not a barrier
  - Audit settlements

Step 2: Checking the eligibility of a MAP request

- Audit settlements: best practice 27.3

Cases where audit settlements have been entered into to settle the taxation action in question between tax authorities and taxpayers. In this regard:

27.3.1 Taxpayers should not be required, either explicitly or implicitly, to waive their right to MAP in order to obtain an audit settlement, noting that it is the choice of the taxpayer to request for MAP or not following such a settlement.

27.3.2 There should be no informal agreements or pressure from the audit/examination function discouraging taxpayers from accessing MAP, including: – The threat of a higher audit adjustment, assessment or settlement amount if MAP is pursued.

The threat of future audits as a consequence of requesting MAP. – The imposition or revocation of (criminal) penalties or criminal prosecution being contingent on whether MAP is accessed.

27.3.3 Jurisdictions should ensure that audit practices and settlement procedures do not undermine taxpayers' treaty rights or create undue deterrents to accessing MAP.

Admissibility Review

In MEMAP, these are two distinct steps:

Step 2: Checking the eligibility of a MAP request

Step 3: Determination whether the objection is justified

1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of either Contracting State. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Convention.
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Step 3: Determination whether the objection is justified

Based on a prima facie analysis of the request, the objection raised by the taxpayer could be considered not justified because of:

- Substantive position taken by the jurisdiction
- Taxpayer didn't provide required minimum
- No action by the jurisdiction
- Taxpayer couldn't underpin its position based on the facts

Step 3: Determination whether the objection is justified

Objection not justified:
- Based on a preliminary analysis
- Bilateral consultation

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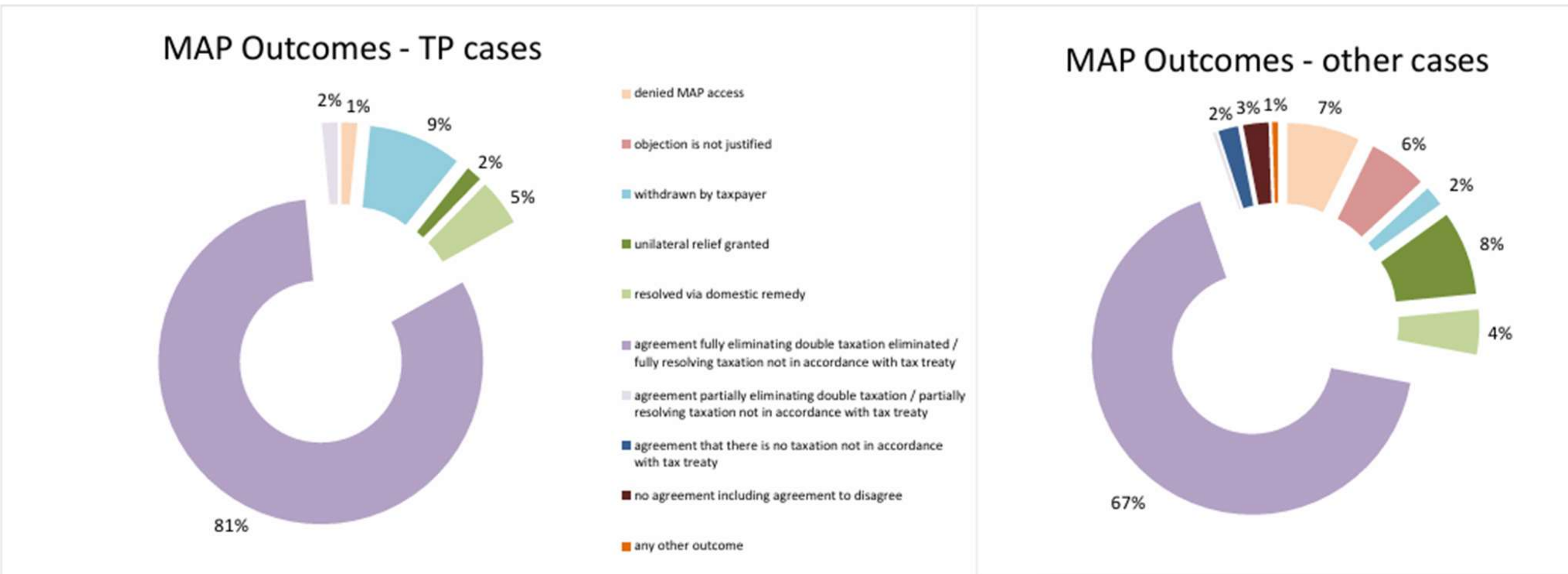
Step 3: Determination whether the objection is justified

“Belgium meets the requirements regarding the availability and access to MAP under the Action 14 Minimum Standard. It provides access to MAP in all eligible cases. Furthermore, Belgium has in place a documented bilateral consultation or notification process for those situations in which its competent authority considers the objection raised by taxpayers in a MAP request as not justified.”

Step 3: Determination whether the objection is justified - Example



Unilateral Phase

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Unilateral relief

113. The ability to resolve MAP cases through unilateral relief is fundamental to the effectiveness as well as the credibility of the MAP process and reflects a jurisdiction’s commitment to apply treaty provisions objectively. Providing unilateral relief fosters trust and builds the relationship between competent authorities, demonstrating independent application of the treaty and a willingness from the competent authority to forgo revenue assessed or collected by its own tax administration, where the treaty has been incorrectly applied.

Unilateral relief – example

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Bilateral phase

New MEMAP

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Bilateral phase

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2. The competent authority **shall endeavour**, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with the Convention. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting States.

Factsfinding

- Taxation in Belgium/Belgian resident
- Taxation in other Country/other Country resident

How to reach an agreement?

- Exchanges of position papers

- Face-to-face meetings

- Online - meetings

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In person meetings

- Increase efficiency

- Easier to find a compromise

- Follow-up Teams-meetings

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Bilateral Phase: Practical Examples

Court decision

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Best practice 42. If a competent authority is legally bound by a court decision in line with Best practice 41 and cannot deviate from that decision in MAP, it should communicate this position to the other competent authority and within a reasonable time, provide a translated copy of the decision, along with a clear summary of the decision, including the reasoning behind it, to allow the other competent authority to determine whether correlative relief can be granted in MAP in line with that decision. A **MAP case should not be closed unilaterally without allowing the other competent authority adequate time to make such a determination and to provide for relief of taxation not in accordance with the treaty to the extent possible.**

Dual Residence

Conflict of residence

- Tie-breaker rule
  - Registration in one or another is not decisive
  - Fact-intensive

Employment Income

Cross-border work – Remote work

- Working days
- Facts
- Employer data

PE

Permanent establishment disputes

- Existence of a dependent agent
- Anti-fragmentation issues
- Home-office activities

Taxpayer agreement

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- Within a due time

- Withdrawn ongoing legal procedure (including domestic appeal) with respect to the issues covered by MAP

- Signature on the pdf-document

Implementation

- "Expertise"
- Result

Closing letter

- Inform other state on taxpayer's response

- Exchange OECD-statistics

- Close the case officially

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Arbitration

New MEMAP

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Detailed Arbitration Guidance (New)

- Models,
- Best practices
- Support for jurisdictions new to arbitration

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Arbitration

[Belgium - MLI Arbitration Profile]

Arbitration

168. Paragraph 5 of Article 25 of the OECD Model Tax Convention (2017) provides the legal framework under which unresolved issues in a MAP case may be submitted to arbitration. According to this provision, arbitration becomes available where the following two conditions are satisfied:

• First, a person has presented a case under paragraph 1 of Article 25 to the competent authority of a Contracting State, on the basis that the actions of one or both of the Contracting States **have resulted** in taxation not in accordance with the provisions of the tax treaty.

• **Second, the competent authorities have been unable to reach an agreement to resolve that case under paragraph 2 of Article 25 within two years from the date when all information required by both competent authorities to address the case has been provided to them.**

Arbitration

MEMAP offers some guidance on the wording “Unable to reach an agreement”:

- Moreover, MAP arbitration may be limited to only the unresolved issues in a case. For instance, if four out of five issues raised in the MAP request have already been resolved through bilateral discussions, arbitration may still be initiated for the remaining unresolved issue.
- 170. In addition, it is also important to note that for the purposes of paragraph 5, a MAP case should **not be considered resolved where at least one issue remains on which the competent authorities disagree and where one of the competent authorities maintains that such disagreement results in taxation not in accordance with the provisions of the treaty**. In such situations, a competent authority cannot unilaterally declare the case closed or deny a taxpayer’s right to request arbitration of the unresolved issue. Similarly, both competent authorities cannot consider the case resolved and deny arbitration if outstanding issues remain that prevent them from jointly concluding that taxation not in accordance with the treaty has been avoided.
- 171. However, where the competent authorities agree that taxation in both jurisdictions has been in accordance with the treaty and no unresolved issues remain, the case may be considered resolved for the purposes of paragraph 5.68 In addition, a case is considered resolved where the competent authorities have reached an agreement **that resolves all the issues with regards to the application of the tax treaty (even if the taxpayer does not consider that the MAP agreement provides a correct solution to the case).**

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Arbitration

Best practice 54. Where discussions between competent authorities in MAP are seen to be productive but go beyond the prescribed period for arbitration under the concerned treaty or instrument, taxpayers should assess whether to allow MAP discussions to continue beyond the time-limit or request for arbitration, weighing the time and effort required to set up a panel against the likelihood of an agreement resolving taxation not in accordance with the treaty.

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Questions?

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