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Transfer pricing

Procedures for the elimination of double taxation in 25 countries

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Introduction

The reassessment of the transfer pricing policy of a multinational enterprise results in principle in double taxation. Indeed, the amount reassessed by a State at the level of an affiliated company has already been taxed by another State at the level of the other affiliated company party to the reassessed transaction; the same income is therefore taxed twice. A transfer pricing reassessment can also have a withholding tax impact: in certain countries (such as France), the amount reassessed characterizes a deemed distribution of profit subject (depending on the tax treaty applicable) to a withholding tax. Transfer pricing reassessment can therefore have significant tax impacts.

In many countries, nearly all tax audits include an examination of the transfer pricing policy of the audited company. As a consequence, the transfer pricing policies of multinational enterprises are more frequently reassessed by tax authorities. This trend, that is likely to continue further to the works of the OECD in the context of the Base Erosion and Profit Shifting ("BEPS") project, have led multinational enterprises to more frequently engage international procedures leading to the elimination of double taxation. The increasing use of such international procedures is shown by the statistics provided by the OECD: according to the figures reported by countries belonging to the OECD, the number of mutual agreement procedures increased by 130% between 2006 and 2014 to reach more than 5,400 cases at the end of 2014.

Two types of international procedures exist further to a transfer pricing reassessment:

- the mutual agreement (and, sometimes, arbitration) procedure set forth by the applicable tax treaty; and
- when two European States are involved, the Convention of 23 July 1990 on the elimination of double taxation in connection with the adjustment of profits of associated enterprises (the "European Arbitration Convention"). The practical implementation of this convention gave rise to a code of conduct adopted by the European Council in 2004 and revised in 2009 and in 2015.

In practice, these procedures are generally engaged by the two affiliated companies involved in the reassessed transaction. The delay to engage the procedures is often three years as from the tax reassessment notice but can be shorter. Under a mutual agreement procedure ("MAP"), tax authorities must do their best efforts to eliminate the double taxation but are not obliged to find an agreement (this is however generally the case for procedures involving countries belonging to the OECD). Under an arbitration procedure (which is implemented generally if, after a two-year delay, a MAP has not led to an agreement), a mechanism is implemented so that – further certain steps to be performed in a given timeframe – a solution to eliminate double taxation is defined and imposed to the tax authorities involved. Under an arbitration procedure, either pursuant to a tax treaty or the European Arbitration Convention, taxpayers have certainty that the procedure will result in the elimination of double taxation.

These procedures are unfortunately lengthy: according to the statistics published by the OECD, the average duration between countries belonging to the OECD is around two years. Cases treated under these procedures can obviously be complex and the tax authorities generally have limited resources to deal with these procedures. This is most certainly the main issue of these procedures. Given that it is unlikely that resources of the competent authorities increase where the double taxation cases will increase, new forms of procedures such as the so-called "baseball arbitration" introduced by the United States in their tax treaties can contribute to a quicker resolution of the cases: indeed, under a "baseball arbitration", the arbitration commission must select one of the proposals to resolve the case made by the States involved and cannot develop a third alternative solution (this technique should lead the States involved to propose reasonable solutions).

These procedures were also the subject of Action 14 of the BEPS project. Further to this Action 14, a minimum standard with respect to the resolution of treaty-related disputes has been developed. This minimum standard aims in particular at:

- ensuring that treaty obligations related to the MAP are fully implemented in good faith and that MAP cases are resolved in a timely manner (on this last point, countries should commit to seek to resolve MAP cases within an average timeframe of two years);
- ensuring that taxpayers can access the MAP when eligible.

In addition to the commitment to implement the minimum standard by all countries adhering to the outcomes of the BEPS Project, the following countries have declared their commitment to provide for mandatory binding arbitration in their bilateral tax treaties as a mechanism to guarantee that treaty-related disputes will be resolved within a specified timeframe: Australia, Austria, Belgium, Canada, France, Germany, Ireland, Italy, Japan, Luxembourg, the Netherlands, New Zealand, Norway, Poland, Slovenia, Spain, Sweden, Switzerland, the United Kingdom and the United States. This represents an important step as together these countries were involved in more than 90% of outstanding MAP cases at the end of 2013 (as reported to the OECD).

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Algeria

1. In your jurisdiction, what are the legal bases for eliminating double taxation further to a transfer pricing reassessment (European Arbitration Convention, mutual agreement procedures provided for by tax treaties)? In addition to the procedures set forth by such tax treaties, is there any other (formal or informal) domestic procedure in your jurisdiction?

First of all, we draw your attention to the fact that we are not aware about any transfer pricing reassessment in Algeria so there has been no necessity to eliminate double taxation in that framework.

Generally speaking, eliminating double taxation could be envisaged only through the Double Taxation Treaties (hereinafter **"DTT"**) signed by Algeria with other countries. There is no domestic procedure provided for by the Algerian regulation.

2. In addition – as the case may be – to the European Arbitration Convention, did your jurisdiction sign tax treaties with other States including an arbitration procedure? If yes, can you give the list of such States?

The majority of the DTT signed by Algeria follows the OECD Model Tax Convention and provides for a Mutual Agreement Procedure (hereinafter "MAP"). However, to date, no DTT signed by Algeria includes an arbitration clause.

3. In your experience, in your jurisdiction, how long does it take generally to eliminate the double taxation under the European Arbitration Convention and/or mutual agreement procedures set forth by tax treaties (and/or the domestic procedure if it exists)?

As mentioned above (see question 1), there is no precedent in the framework of transfer pricing issues to the best of knowledge.

However, as a general remark, the tax administration applies the double tax treaty provisions related to the elimination of double taxation (not only for transfer pricing disputes). For instance, the provisions of the article 24 and 26 of the DTT between Algeria and France about double taxation elimination and MAP are applicable.

The practice shows that it is difficult in such matter to estimate the time line for eliminating the double taxation.

4. In your jurisdiction, what are the starting point and time limit to initiate a procedure to eliminate double taxation resulting from a transfer pricing reassessment?

There are no administrative guidelines but the DTT, such as the one signed with France, generally provide for a three-year time limit starting from the first notification of the action resulting in taxation not in accordance with the provisions of the convention.

5. If a reassessment is issued by your tax authorities, which State must receive the application for the international procedure to eliminate double taxation[1] (your State? the other State concerned? both States?)	Provisions of the double tax treaty apply: the company may initiate a MAP if it considers that the actions of one or both of the Contracting States result or will result for it in taxation not in accordance with the provisions of the double tax treaty. It will present its case to the competent authority of the Contracting State of which it is a resident.
6. What are the formal conditions to initiate an international procedure to eliminate double taxation? Is there a list of documents to provide? To which department of the tax authorities (name, address) must the request be sent?	There are no administrative guidelines.
7. In which cases would the competent authority of your jurisdiction refuse to engage / participate to the international procedure to eliminate double taxation?	There are no administrative guidelines.
8. Is tax collection suspended during the procedure?	There are no administrative guidelines.
9. Assuming the procedure results in an agreement on a way to cancel double taxation, how is generally such agreement implemented in your jurisdiction?	There are no administrative guidelines.
10. In your jurisdiction, is it possible to engage concomitantly an international procedure to eliminate double taxation and litigation in front of courts? If yes, is it necessary at some stage to abandon the litigation in order to conclude / finalize the international procedure?	There are no administrative guidelines.
11. Any other interesting aspect not addressed above?	We draw your attention to the fact that, to the best of our knowledge, no Algerian resident company initiated a MAP further to a reassessment performed out of Algeria (in the framework of transfer pricing matter or of any other tax matter).

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[1] The terms "international procedure to eliminate double taxation" mean the European Arbitration Convention or a mutual agreement procedure set forth by a tax treaty.

Austria

1. In your jurisdiction, what are the legal bases for eliminating double taxation further to a transfer pricing reassessment (European Arbitration Convention, mutual agreement procedures provided for by tax treaties)? In addition to the procedures set forth by such tax treaties, is there any other (formal or informal) domestic procedure in your jurisdiction?

An Austrian company may apply for a *unilateral correlative adjustment* procedure in accordance with Art 25 (2) of the relevant Double Taxation Treaty. Such application may be filed with the Austrian tax authority and will lead to an elimination of the double taxation provided the Austrian tax authority agrees with the transfer pricing reassessment issued by the foreign tax authority. The Austrian tax authority conducts a diligent review of the foreign tax reassessment. In this regard, the Austrian tax authority may (repeatedly) request documents or information in order to approve the foreign tax reassessments. This process may take several months.

If the Austrian tax authority agrees with the foreign tax reassessment, a transfer pricing adjustment may be achieved by way of a unilateral procedure without the requirement of initiating a mutual agreement procedure. Otherwise, a *mutual agreement procedure* in accordance with Art 25 (2) of the relevant Double Taxation Treaty or the European Arbitration Convention may be initiated. Such mutual agreement procedure is carried out between the two states, from a legal perspective the taxpayer is not party. In practice the taxpayer is however usually involved by the tax authorities and may bring forward its arguments.

If the two above mentioned measures are not successful, the taxpayer may finally apply for a *tax waiver* in accordance with sec. 48 Austrian Federal Tax Code *(Bundesabgabenordnung)* (hereinafter **"FTC"**). Such waiver is a unilateral Austrian measure applied by the Austrian tax authority (in its sole discretion) to protect Austrian companies in cases of insufficient international protection.

The taxpayer may also apply for forbearance with the argument that a tax collection in the respective single case would be unreasonable (cf. § 236 FTC). In practice this instrument is however rarely successful, the decision lies within the sole discretion of the Austrian tax authority.

2. In addition – as the case may be – to the European Arbitration Convention, did your jurisdiction sign tax treaties with other States including an arbitration procedure? If yes, can you give the list of such States?	Based on the updated article 25 sec. 5 of the OECD Model Tax Convention (hereinafter **"OECD-MTC"**), Austria has incorporated the arbitration clause up to now in the following Double Taxation Treaties (hereinafter **"DTT"**): Armenia, Azerbaijan, Bahrain, Bosnia and Herzegovina, Germany, Macedonia, Mongolia, San Marino and Switzerland. These clauses have all in common that an arbitration procedure may be initiated only after a mutual agreement procedure based on article 25 of the OECD-MTC has remained unsuccessful for a period of (usually) two years (exception Germany: three years).
3. In your experience, in your jurisdiction, how long does it take generally to eliminate the double taxation under the European Arbitration Convention and / or mutual agreement procedures set forth by tax treaties (and / or the domestic procedure if it exists)?	A *unilateral correlative adjustment procedure* may take a few months up to one year depending whether the responsible tax officer is satisfied with the submitted information in regard of the foreign tax assessment. The tax officers may request repeatedly information from the taxpayer in order to review the foreign tax assessment. A *mutual agreement procedure* usually takes between one and two years. The pace of such procedure depends on the two tax authorities involved in such procedure.
4. In your jurisdiction, what are the starting point and time limit to initiate a procedure to eliminate double taxation resulting from a transfer pricing reassessment?	In both procedures, the mutual agreement procedure under the DTT as well as the mutual agreement procedure under the EU Arbitration Convention, the application for commencement of a procedure must be filed within *three years* after the "first notification" of the action which results or is likely to result in double taxation. Austrian commentators take the opinion that such "first notification" may be (i) the meeting where the results of the tax audit are finally notified by the tax authority to the taxpayer, or (ii) the date of the relevant tax assessments or (iii) the actual taxation of the taxpayer at the latest. The preferred timing of initiating a procedure may vary as such decisions depends on the circumstances of the single case.
5. If a reassessment is issued by your tax authorities, which State must receive the application for the international procedure to eliminate double taxation[1] (your State? the other State concerned? both States?)	The Austrian tax authorities take the opinion that a *mutual agreement procedure* should be commenced in the contracting state where the headquarters of the group is located. However, an Austrian subsidiary may apply for a *unilateral correlative adjustment procedure* with the competent Austrian tax authority.
6. What are the formal conditions to initiate an international procedure to eliminate double taxation? Is there a list of documents to provide? To which department of the tax authorities (name, address) must the request be sent?	The prerequisite for initiating an international procedure is a breach or likely breach of a DTT. The application needs to be submitted in writing. There are no specific formal requirements.

[1] The terms "international procedure to eliminate double taxation" mean the European Arbitration Convention or a mutual agreement procedure set forth by a tax treaty.

The application should contain:

- Name of the applicant;
- Address of the applicant or legal seat;
- Tax number;
- Competent tax authority of the applicant;
- Detailed statement of the facts;
- Relevant tax period(s);
- Statement why (in the opinion of the applicant) the taxation breached a DTT;
- Statement about pending appeals (if any);
- Attachments such as tax resolutions or tax reassessment reports; i.e. each documentation which may be relevant for the procedure.

The competent Austrian tax authority is the *department No VI/8 – International Tax Law – at the Federal Ministry of Finance,* Johannesgasse 5, 1010 Vienna.

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7. *In which cases would the competent authority of your jurisdiction refuse to engage/participate to the international procedure to eliminate double taxation?*

Mutual Agreement Procedure pursuant to DTT

Prior to commencing a mutual agreement procedure, the tax authority will review the case at hand and determine whether the material prerequisites for such procedure are fulfilled (Pre-trial). In such pre-trial, the tax authority will also review the possibility of resolving the tax issue at hand on a national level. The material prerequisites are in particular:

- Legal capacity of the applicant to apply for a mutual agreement procedure;
- An occurred breach of a DTT or the likelihood of such breach;
- Compliance with the respective statute of limitation (e.g. three-years term);
- Justification of the objections made in the application.

Only if the tax authority finds the prerequisites fulfilled, it may initiate a mutual agreement procedure. The decision whether to initiate such procedure lies within the sole discretion of the tax authority. The tax authority may decline the commencement of a procedure in case of tax abuse or tax fraud. A mutual agreement procedure is also excluded if serious penalties were imposed on the taxpayer. In the interpretation of the Austrian tax authorities, such serious penalties are intentional or reckless tax abuses subject to the Austrian Financial Penal Code.

Arbitration Procedure

Subject to an arbitration procedure is generally every dispute in the framework of transfer pricing that may be subject to a mutual agreement procedure (cf. OECD-MTCcommentary recital 68). Hence, the purpose of the arbitration procedure is to resolve all questions, which could not have been resolved in the course of the mutual agreement procedure. Subsequently, however, an arbitration procedure is excluded if serious penalties were imposed on the taxpayer (as in such case the commencement of a mutual agreement procedure was already excluded from the beginning).

8. Is tax collection suspended during the procedure?

For the duration of a mutual understanding procedure, the collection of the taxes may be suspended. Such suspension may be valid up to two years, although subsequent suspensions may be granted. The taxpayer has to apply for such suspension. The prerequisite for the suspension is (i) that the instant collection of the respective tax would lead to a disproportionate financial turmoil of the taxpayer and (ii) that the tax collection will not be endangered by the suspension. In case of a tax suspension, interest is triggered in the amount of 4.5% plus the basis rate[2].

9. Assuming the procedure results in an agreement on a way to cancel double taxation, how is generally such agreement implemented in your jurisdiction?

In Austria:

- Correlative adjustments are performed over the years reassessed in the other state;
- The taxpayer receives interest on the tax credit at a rate of 2% plus the basis rate;
- In case of hidden profit distributions, withholding tax may be triggered at a rate of 25% or reduced rates on the basis of DTT.

10. In your jurisdiction, is it possible to engage concomitantly an international procedure to eliminate double taxation and litigation in front of courts? If yes, is it necessary at some stage to abandon the litigation in order to conclude / finalize the international procedure?

In Austria, tax procedures are administrative procedures in the first instance. Such administrative procedures turn into court procedures in case the taxpayer appeals the first-instance decision.

Simultaneous mutual agreement procedure and administrative / court procedure: the taxpayer may simultaneously exercise its national remedies against a decision of a tax authority regardless of the request to initiate a mutual agreement procedure. As the outcome of a mutual agreement procedure is rather uncertain, some Austrian scholars recommend halting the national proceedings until the mutual agreement procedure has come to a result. On the other hand, the taxpayer may also exhaust the national remedies before requesting a mutual agreement procedure.

Simultaneous arbitration and national appeals procedure: the commencement of an arbitration procedure is excluded if a court or tribunal in one of the involved jurisdictions has ruled on the tax issues at hand. In such case, the taxpayer should suspend the appeals procedure as such suspension will allow the commencement of the arbitration procedure. After the arbitration award has been rendered, the taxpayer may accept the arbitration award or continue with the national appeals procedure.

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[2] The basis rate is published by the Austrian national bank on a monthly basis.

Belgium

1. In your jurisdiction, what are the legal bases for eliminating double taxation further to a transfer pricing reassessment (European Arbitration Convention, mutual agreement procedures provided for by tax treaties)? In addition to the procedures set forth by such tax treaties, is there any other (formal or informal) domestic procedure in your jurisdiction?

Multiple procedures to eliminate double taxation are available in the Belgian jurisdiction; their legal basis is laid down in 1 the European Arbitration Convention (96/436/EEC), 2) the tax treaties concluded by Belgium and 3) the Belgian Income Tax Code.

1. Belgium is a party to the European Arbitration Convention, which is directly applicable under Belgian law. Administrative guidelines on application of the European Arbitration Convention are provided within Circular Letter nr. AFZ/Intern IB/98-0170 dd. 7 July 2000 (as amended by Circular Letter nr. AFZ/Intern. IB/98-0170 dd. 25 March 2003).
2. Mutual agreement procedure (hereinafter "MAP"): most tax treaties concluded by Belgium provide a MAP in line with the OECD Model Tax Convention.
3. Belgian internal legislation provides two procedures to remedy/eliminate double taxation unilaterally: the appeal procedure and the *ex officio* procedure;
   - The appeal procedure is available only in case a tax assessment notice is issued by the Belgian tax authorities towards a Belgian taxpayer. The procedure has to be initiated within six months as from the third working day following the day on which the assessment notice was sent to the Belgian taxpayer.
   - The *ex officio* procedure has to be initiated within five years as from the 1st of January of the year in which the tax leading to double taxation was assessed. The procedure is not available insofar the concerned assessments have already been subject to a Belgian administrative appeal procedure in which a final decision was rendered.

2. In addition – as the case may be – to the European Arbitration Convention, did your jurisdiction sign tax treaties with other States including an arbitration procedure? If yes, can you give the list of such States?

Double Taxation Treaties (hereinafter **"DTT"**) concluded by Belgium with the USA and the UK include an arbitration clause.

3. In your experience, in your jurisdiction, how long does it take generally to eliminate the double taxation under the European Arbitration Convention and / or mutual agreement procedures set forth by tax treaties (and / or the domestic procedure if it exists)?

In our experience, the MAP procedure can take one to three years, whereas the *ex officio* procedure generally takes three to six months.

With regard to the appeal procedure, the Belgian tax authorities are strictly speaking not bound by a deadline to render a decision, but in general a decision is rendered within six months. In case no decision is rendered within six months, the appeal can be brought before the court.

4. In your jurisdiction, what are the starting point and time limit to initiate a procedure to eliminate double taxation resulting from a transfer pricing reassessment?

The starting point for a procedure to eliminate double taxation will be the assessment notice sent to the taxpayer by the tax authorities.

In general, it is recommended to contact the tax authorities that have issued the assessment notice in order to have an informal discussion, as soon as possible after reception of that assessment notice. If these informal contacts demonstrate that no informal settlement can be reached, the appeal procedure is to be initiated (obviously within the applicable deadline of six months as from the third working day following the day on which the assessment notice was sent to the Belgian taxpayer). The MAP can only be initiated after the appeal deadline of six months has expired. The MAP can however be initiated even when the *ex officio* procedure deadline of five years has not yet expired.

5. If a reassessment is issued by your tax authorities, which State must receive the application for the international procedure to eliminate double taxation[1] (your State? the other State concerned? both States?)

According to the procedure as provided within the European Arbitration Convention, the State of residence of the taxpayer that has been reassessed, or the State in which its permanent establishment to which the taxable income is accountable is situated must receive the application for the procedure.

With regard to the MAP, most Belgian DTTs provide that the taxpayer is to present its case to the competent authority of the contracting state of which it is a resident. Exceptionally, e.g. within the tax treaty concluded with the USA, the taxpayer may present its case to the competent authority of the contracting state of its choice.

6. What are the formal conditions to initiate an international procedure to eliminate double taxation? Is there a list of documents to provide? To which department of the tax authorities (name, address) must the request be sent?

The procedure as provided by the applicable DTT or the European Arbitration Convention has to be initiated according to the formalities as described by Circular Letter nr. AFZ/Intern IB/98-0170 dd. 7 July 2000 (as amended by Circular Letter nr. AFZ/Intern. IB/98-0170 dd. 25 March 2003).

The written request is to provide all necessary information on the taxpayer and the assessment(s), describing the double (taxation) that has occurred in contradiction to the applicable DTT. It is to include a description of the factual circumstances, and of the applicable Belgian and foreign tax legislation, together with legal arguments opposing the double taxation.

[1] The terms “international procedure to eliminate double taxation” mean the European Arbitration Convention or a mutual agreement procedure set forth by a tax treaty.

In general, the written request is to be filed within three years as from notification of the assessment notice. It should be filed in the French or Dutch language. It is to be addressed to the competent authority (regional director of the relevant tax assessment office) with copy to the director of International Relations within the General Administrations of Taxes, North Galaxy Building, Koning Albert II-laan 33 bus 22, 1030 Brussels, Belgium). Some DTTs provide specific deadlines for the filing of the request. For example, the DTTs with Canada, Greece, Italy and Portugal provide that the request has to be filed within two years as from the notification.

7. In which cases would the competent authority of your jurisdiction refuse to engage / participate to the international procedure to eliminate double taxation?

The Belgian tax authorities will refuse to engage in a procedure when the concerned tax assessment does not result from a "matter as described within article 4 of the European Arbitration Convention". No explicit definition of 'transfer pricing' or 'transfer pricing dispute' is provided.

In case of a final decision or judgment after an administrative or judicial procedure demonstrating that the taxpayer is liable to "serious penalties", the Belgian tax authorities are entitled to refuse to handle the procedure.

For the term 'serious penalty', reference is made to the European Arbitration Convention; *"a criminal or administrative penalty in cases, either of a common law offence committed with the aim of tax evasion, or infringements of the provisions of the Belgian Income Tax Code or of decisions taken in implementation thereof, committed with fraudulent intention or with the intention of causing injury"*.

According to our experience, are generally regarded as a 'serious penalty' in Belgium, the criminal penalties imposed in application of articles 449–451 of the Belgian Income Tax Code.

In general, no similar restrictions exist for the MAP as provided by the DTT concluded by Belgium.

8. Is tax collection suspended during the procedure?

According to Belgian law, tax collection is suspended as long as no final decision has been taken on the disputed tax assessment, unless the tax authorities' rights are at stake. In case of an international procedure based on the European Arbitration Convention or the applicable DTT, the tax authorities will generally uphold that their rights are at stake, so that tax collection is not suspended.

In case tax collection is indeed suspended, late payment interest will in principle apply at the rate of 7% per annum.

9. Assuming the procedure results in an agreement on a way to cancel double taxation, how is generally such agreement implemented in your jurisdiction?

If an agreement is reached to cancel double taxation, the regional tax assessment office will generally reassess each year separately. Late payment interest are due at the rate of 7% per annum, unless the agreement decides otherwise.

A transfer pricing reassessment should not give rise to withholding tax.

10. In your jurisdiction, is it possible to engage concomitantly an international procedure to eliminate double taxation and litigation in front of courts? If yes, is it necessary at some stage to abandon the litigation in order to conclude / finalize the international procedure?

The international procedure as provided by the European Arbitration Convention can be initiated even when a case is filed with a Belgian court.

As long as no final judgment has been rendered, the States concerned can still engage an international procedure to reach an agreement, but no advisory commission as referred to in article 7 (1) of the European Arbitration Convention can however be set up.

11. Any other interesting aspect not addressed above?

Some interesting figures / statistics provided by the Belgian tax authorities:

— Open MAP cases end 2013: 24, of which eight older than two years;
— Open MAP cases end 2014: 36, of which 11 older than two years;
— Written requests refused in 2013: 1;
— Written requests refused in 2014: 0.

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Brazil

1. In your jurisdiction, what are the legal bases for eliminating double taxation further to a transfer pricing reassessment (European Arbitration Convention, mutual agreement procedures provided for by tax treaties)? In addition to the procedures set forth by such tax treaties, is there any other (formal or informal) domestic procedure in your jurisdiction?

Double Tax Treaties (hereinafter "DTTs") signed by Brazil do not usually provide for the correlative adjustments set forth in paragraph 2 of article 9 of the OECD Model Tax Convention (hereinafter "OECD-MTC") and the Brazilian Administrative Tax Courts do not typically apply DTT dispositions to transfer pricing matters.

There is no legal basis in Brazil to eliminate international double taxation arising from a transfer pricing reassessment of a Brazilian company. However, Brazilian Law recently established a domestic procedure in order for Brazilian companies to eliminate double taxation in Brazil arising from transfer pricing adjustments resulting from transactions performed with a controlled company abroad if the profits of said foreign controlled company are taxed in Brazil.

2. In addition – as the case may be – to the European Arbitration Convention, did your jurisdiction sign tax treaties with other States including an arbitration procedure? If yes, can you give the list of such States?

The DTTs signed by Brazil do not provide for any sort of arbitration procedure.

3. In your experience, in your jurisdiction, how long does it take generally to eliminate the double taxation under the European Arbitration Convention and/or mutual agreement procedures set forth by tax treaties (and/or the domestic procedure if it exists)?

Brazil does not establish any procedures to eliminate international double taxation arising from the reassessment of a Brazilian company on transfer pricing matters.

4. In your jurisdiction, what are the starting point and time limit to initiate a procedure to eliminate double taxation resulting from a transfer pricing reassessment?

Brazil does not establish any procedures to eliminate international double taxation regarding transfer pricing matters.

5. If a reassessment is issued by your tax authorities, which State must receive the application for the international procedure to eliminate double taxation[1] (your State? the other State concerned? both States?)	Brazil does not establish any procedures to eliminate international double taxation regarding transfer pricing matters.
6. What are the formal conditions to initiate an international procedure to eliminate double taxation? Is there a list of documents to provide? To which department of the tax authorities (name, address) must the request be sent?	Brazil does not establish any procedures to eliminate international double taxation regarding transfer pricing matters.
7. In which cases would the competent authority of your jurisdiction refuse to engage / participate to the international procedure to eliminate double taxation?	Brazil does not establish any procedures to eliminate international double taxation regarding transfer pricing matters.
8. Is tax collection suspended during the procedure?	Brazil does not establish any procedures to eliminate international double taxation regarding transfer pricing matters.
9. Assuming the procedure results in an agreement on a way to cancel double taxation, how is generally such agreement implemented in your jurisdiction?	Brazil does not establish any procedures to eliminate international double taxation regarding transfer pricing matters.
10. In your jurisdiction, is it possible to engage concomitantly an international procedure to eliminate double taxation and litigation in front of courts? If yes, is it necessary at some stage to abandon the litigation in order to conclude / finalize the international procedure?	As Brazil does not establish any procedures to eliminate international double taxation regarding transfer pricing matters, Brazilian companies could argue the matter in judicial courts.
11. Any other interesting aspect not addressed above?	Although (i) Brazilian tax legislation does not expressly provide for the elimination of double taxation arising from transfer pricing adjustments, (ii) the DTTs signed by Brazil do not provide for the correlative adjustments set forth in paragraph 2 of article 9 of the OECD-MTC and (iii) the Brazilian Administrative Tax Courts do not typically apply DTT dispositions to transfer pricing matters, in case a company domiciled abroad controlled by a Brazilian legal entity suffered a transfer pricing reassessment relating to transactions performed with its Brazilian controlling entity, such Brazilian legal entity could amend its corporate income tax calculations to exclude such transfer pricing adjustments from the taxable basis of the profits earned abroad, based on a Law enacted in 2014.

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[1] The terms “international procedure to eliminate double taxation” mean the European Arbitration Convention or a mutual agreement procedure set forth by a tax treaty.

Bulgaria

1. In your jurisdiction, what are the legal bases for eliminating double taxation further to a transfer pricing reassessment (European Arbitration Convention, mutual agreement procedures provided for by tax treaties)? In addition to the procedures set forth by such tax treaties, is there any other (formal or informal) domestic procedure in your jurisdiction?

Double taxation elimination further to a transfer pricing reassessment in Bulgaria may be achieved under:

— The procedure as provided under the applicable double treaty – currently Bulgaria is party to 69 double tax treaties, all providing a mutual agreement procedure;
— The European Arbitration Convention – under the European Union (hereinafter "EU") accession Agreement between Bulgaria and the EU, Bulgaria enters as a party to the Arbitration Convention as of 1 July 2008.

The Bulgarian domestic legislation does not explicitly provide for alternative instruments for the elimination of double taxation further to a transfer pricing adjustment, apart for the above mentioned options. The Transfer Pricing Guidelines issued by the Bulgarian revenue authorities refer to these procedures only.

2. In addition – as the case may be – to the European Arbitration Convention, did your jurisdiction sign tax treaties with other States including an arbitration procedure? If yes, can you give the list of such States?

Currently, no double tax treaty signed by Bulgaria provides for an arbitration procedure.

3. In your experience, in your jurisdiction, how long does it take generally to eliminate the double taxation under the European Arbitration Convention and/or mutual agreement procedures set forth by tax treaties (and/or the domestic procedure if it exists)?

There are no explicit rules in the domestic legislation about such procedures, neither there is an established practice of the Bulgarian revenue authorities. There have been very limited number of cases in practice and the timeframe to complete the procedure varies depending on the complexity of the cases.

4. In your jurisdiction, what are the starting point and time limit to initiate a procedure to eliminate double taxation resulting from a transfer pricing reassessment?

The starting point for measuring the three-year term to initiate the procedure, which always applies, starts accruing as of the handling of the tax assessment report[1] in a tax audit.

It should be advisable to first start the discussions with the revenue authorities immediately after the delivery of the tax assessment report and to start the actual procedure along with an appeal process.

5. If a reassessment is issued by your tax authorities, which State must receive the application for the international procedure to eliminate double taxation[2] (your State? the other State concerned? both States?)

According to the applicable procedure, the Bulgarian revenue authorities must receive the application for the international procedure to eliminate double taxation.

6. What are the formal conditions to initiate an international procedure to eliminate double taxation? Is there a list of documents to provide? To which department of the tax authorities (name, address) must the request be sent?

There are no explicit documents required to initiate the procedure, the taxpayer should however substantiate the applicability of the procedure before the competent authority.

In Bulgaria the competent authority to address a claim for the initiation of a procedure is the National Revenue Agency, Sofia Directorate having its address at 21 Aksakov Str, 1000 Sofia.

7. In which cases would the competent authority of your jurisdiction refuse to engage / participate to the international procedure to eliminate double taxation?

There are no explicit definitions of "transfer pricing dispute" or "serious penalties" in Bulgarian domestic legislation specifically concerning such cases. However, under the general rules a "serious penalty" with respect to taxation matters under Bulgarian practice would be a penalty levied on an violation of tax laws relating to a tax assessment exceeding a total amount of 140 minimum monthly salaries (currently approx. EUR 27,000).

As already said above, there are only restricted cases related to transfer pricing matters, especially with regard to the elimination of the double taxation. Currently, there are no specific cases, where the tax administration refused to apply the international procedure to eliminate double taxation.

8. Is tax collection suspended during the procedure?

The procedure for the tax collection would not be automatically suspended under the procedure. In fact, the appeal of an assessment act does not suspend the collection of the sums assessed as being due to the treasury, but such suspension may be achieved further to an explicit request and provision of a guarantee.

[1] The tax assessment report is a preliminary act in the course of the tax audit in Bulgaria which contains only a preliminary proposal for the actual assessment, to be set in the tax assessment act that finalizes the tax audit process.

[2] The terms "international procedure to eliminate double taxation" mean the European Arbitration Convention or a mutual agreement procedure set forth by a tax treaty.

9. Assuming the procedure results in an agreement on a way to cancel double taxation, how is generally such agreement implemented in your jurisdiction?

In Bulgaria the adjustments shall be performed over the years concerned.

Interest will be due to the local taxpayer only in cases where a preceding tax assessment imposed by the local tax authorities was decreased/revoked further to the application of a procedure for elimination of double taxation. If the decrease of the tax due results in tax loss for the year, such tax loss may be carried forward under the general rules as of the year of the occurrence (not the year of assessment).

A transfer pricing adjustment of a local company where the amounts paid to a non-resident are considered excessive, usually results in the re-classification of these amounts as hidden profits distribution which renders them as:

— non-deductible for the local company;
— deemed dividend distribution subject to withholding tax; and;
— may also result in an additional penalty.

Withholding tax on deemed distribution is levied according to the applicable double tax treaty. However, the specific treaty may explicitly prohibit withholding tax relief on hidden profit distribution[3].

10. In your jurisdiction, is it possible to engage concomitantly an international procedure to eliminate double taxation and litigation in front of courts? If yes, is it necessary at some stage to abandon the litigation in order to conclude/finalize the international procedure?

It should be possible in Bulgaria before courts. Such procedure should suspend the court appeal process. The court appeal process is a two instance procedure – a first instance stage held before the relevant Administrative court and the cassation procedure before the Bulgarian Supreme Administrative Court.

11. Any other interesting aspect not addressed above?

The practice in Bulgaria on such cases is very limited and is yet to develop.

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[3] Recently updated double tax treaties, such as the treaties between Bulgaria and Norway, Switzerland, the UK, Romania respectively contain specific anti-avoidance rules that will not allow dividend tax relief on hidden profit distributions.

China

1. In your jurisdiction, what are the legal bases for eliminating double taxation further to a transfer pricing reassessment (European Arbitration Convention, mutual agreement procedures provided for by tax treaties)? In addition to the procedures set forth by such tax treaties, is there any other (formal or informal) domestic procedure in your jurisdiction?

In China, the legal bases for eliminating double taxation are twofold:

— Double tax treaty concluded between China and the other State. For example, the tax treaty between China and France for the avoidance of double taxation where article 26 provides for the mechanism of negotiation between tax authorities of France and China to resolve double taxation issues; and,
— Domestic laws:
  1. transfer pricing rules, namely "Implementation Measures of Special Tax Adjustment Implementing Measures" issued by the State Administration of Taxation (also referred to as "TP Rules"), effective as of 8 January 2009. Chapter 11 of these Measures provides for the general provisions in this regard; and,
  2. the procedural law, "Implementation Measures for the Mutual Agreement Procedure of Tax Treaties" issued by the State Administration of Taxation ((also referred to as "Procedural Rules"), effective as of 1 November 2013.

2. In addition – as the case may be – to the European Arbitration Convention, did your jurisdiction sign tax treaties with other States including an arbitration procedure? If yes, can you give the list of such States?

To the best of our knowledge, no arbitration procedure is provided for by tax treaties in China.

3. In your experience, in your jurisdiction, how long does it take generally to eliminate the double taxation under the European Arbitration Convention and / or mutual agreement procedures set forth by tax treaties (and / or the domestic procedure if it exists)?

The time spent on domestic application by a taxpayer in People's Republic of China ("PRC" hereafter) and subsequent review procedures is around 35 working days, according to the Procedural Rules.

Time for implementing the double taxation elimination should not be longer than three months after the PRC tax authorities and the other tax authorities reach an agreement on the case and related tax refund is initiated on PRC's side.

However, there is no standard regulation regarding the time limit for the negotiation between tax authorities. Time spent on mutual negotiations between the PRC tax authorities and the other tax authorities depends on various factors such as the complexity of the case, responsiveness of the other tax authorities including their review procedures and formalities. A general assessment of the time needed for the mutual negotiation stage is difficult.

4. In your jurisdiction, what are the starting point and time limit to initiate a procedure to eliminate double taxation resulting from a transfer pricing reassessment?

In China, the starting point is the receipt of the notification of reassessment. If the taxpayer fails to initiate such procedure within (in principle) three years from the starting point, tax authorities should no longer accept the request. For some countries having an "old" tax treaty with China, such period may be shorter than three years (such as in the tax treaty with Italy) or no time period can be provided by the tax treaty (such as in the tax treaty with the UK), but the Chinese domestic law provides for the three years period. In practice, we consider that this three years period will be applied by Chinese tax authorities.

In practice, we suggest to have a discussion with tax authorities before initiating the procedure.

5. If a reassessment is issued by your tax authorities, which State must receive the application for the international procedure to eliminate double taxation[1] (your State? the other State concerned? both States?)

In this case, the other State concerned should receive the application for the international procedure.

6. What are the formal conditions to initiate an international procedure to eliminate double taxation? Is there a list of documents to provide? To which department of the tax authorities (name, address) must the request be sent?

A procedure to eliminate double taxation can be initiated if all the following conditions are met:

1. taxpayer considers that there is a double taxation in different jurisdictions further to the notification of a reassessment and consequently initiates the procedure within the three years from receipt of the notification of reassessment;
2. the taxpayer is a Chinese tax resident or a Chinese citizen who can initiate the procedure according to Article 9 or 10 of the Procedural Rules;
3. the application is submitted within the time limit set forth in the double tax treaty;
4. the other country, party to the tax treaty has violated or may have violated the tax treaty; and,
5. the taxpayer has evidences to prove that the othercountry has violated the tax treaty or the suspicion of such violation cannot be excluded.

In case only part of the above conditions are met, a procedure to eliminate double taxation can be initiated if tax authorities consider double taxation as serious or in case the decision of the other tax authorities may harm tax interests of China and a mutual agreement procedure is necessary.

[1] The terms "international procedure to eliminate double taxation" mean the European Arbitration Convention or a mutual agreement procedure set forth by a tax treaty.

Documents to be provided are as follows:

- Standard application form to start mutual negotiation procedure;
- Any other supporting documents.

The national tax authorities, at provincial level, in charge of corporate income tax (for corporate tax residents) are competent.

7. In which cases would the competent authority of your jurisdiction refuse to engage / participate to the international procedure to eliminate double taxation?

1. Taxpayer has deliberately hidden important facts or has provided false documents;
2. Taxpayer has refused to provide necessary documents required by tax authorities;
3. Taxpayer or tax authorities has failed to obtain necessary information to move the mutual agreement procedure forward;
4. The tax authorities of the other country has refused or stopped mutual negotiations;
5. Any other reason which has made the proceeding impossible or which has led the procedure to fail the expected goal.

8. Is tax collection suspended during the procedure?

Tax collection will not be suspended unless tax authorities consider the suspension as necessary.

9. Assuming the procedure results in an agreement on a way to cancel double taxation, how is generally such agreement implemented in your jurisdiction?

It depends on the negotiation with tax authorities. In principle, the correlative adjustments reassessed in the other State should be performed at once because, according to the Procedural Rules, the implementation time should not be longer than three months after the PRC tax authorities and the other tax authorities reached an agreement on the case and related tax refund is initiated on PRC's side.

If the international procedure to eliminate double taxation results in a decrease of tax in PRC, it does not give rise to the payment of interest to the local taxpayer since no regulation provides for it.

In case Chinese tax authorities agree to decrease the royalties, interest or rentals flows with foreign affiliated companies, the related withholding tax paid to PRC will not be adjusted by Chinese tax authorities.

10. In your jurisdiction, is it possible to engage concomitantly an international procedure to eliminate double taxation and litigation in front of courts? If yes, is it necessary at some stage to abandon the litigation in order to conclude / finalize the international procedure?

No. It is not possible in China

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Croatia

1. In your jurisdiction, what are the legal bases for eliminating double taxation further to a transfer pricing reassessment (European Arbitration Convention, mutual agreement procedures provided for by tax treaties)? In addition to the procedures set forth by such tax treaties, is there any other (formal or informal) domestic procedure in your jurisdiction?

Legal bases for eliminating double taxation further to a transfer pricing reassessment in Croatia are:

- Double Tax Treaties (hereinafter "DTTs") signed with 57 countries; and,
- the European Arbitration Convention (in force in Croatia as of 1 January 2015).

There is no special domestic procedure for eliminating double taxation further to a transfer pricing reassessment.

2. In addition – as the case may be – to the European Arbitration Convention, did your jurisdiction sign tax treaties with other States including an arbitration procedure? If yes, can you give the list of such States?

The DTTs signed with Italy and the Netherlands include the arbitration clause.

3. In your experience, in your jurisdiction, how long does it take generally to eliminate the double taxation under the European Arbitration Convention and/or mutual agreement procedures set forth by tax treaties (and/or the domestic procedure if it exists)?

It is difficult to comment on a time frame for the procedure of elimination of double taxation under the DTTs, since there were few cases in Croatia.

Furthermore, we are not aware of any case of elimination of double taxation under the European Arbitration Convention (hereinafter "EAC"), since it only came into force as of 1 January 2015.

4. In your jurisdiction, what are the starting point and time limit to initiate a procedure to eliminate double taxation resulting from a transfer pricing reassessment?

Croatia does not have specific rules about elimination of double taxation incorporated in the local regulations. The only possibility is to apply for the procedure provided by the article 25 of the OECD Model Tax Convention (hereinafter "OECD-MTC") and the related starting point.

The procedure should be initiated in line with the rules set forth in the DTTs containing article 25 of the OECD-MTC. In most of the DTTs concluded by Croatia, the request for a MAP should be filed within three years after the first notification of the action resulting in taxation not in accordance with the provisions of the DTT. However, some DTTs concluded by Croatia provide for other time limits (e.g. two years with Canada, five years with Norway) or no time limit (DTT with the United Kingdom and DTT with Sweden).

5. If a reassessment is issued by your tax authorities, which State must receive the application for the international procedure to eliminate double taxation[1] (your State? the other State concerned? both States?)

The application should be filed in line with the rules set forth in the DTTs containing the article 25 of the OECD-MTC, i.e. to the competent authorities of the state of residence of the company requesting relief of double taxation. In case of transfer pricing adjustment affecting both parties, it is advisable for each taxpayer to file separate requests in their respective state of residence.

According to the EAC, where Croatian tax authorities intend to adjust the profits of a Croatian company it shall inform this company and give it the opportunity to inform its related party so that the related party may inform the other Contracting State.

6. What are the formal conditions to initiate an international procedure to eliminate double taxation? Is there a list of documents to provide? To which department of the tax authorities (name, address) must the request be sent?

There are no local rules with this respect and no special department in charge of the procedure for eliminating double taxation. Generally, tax authorities who will deal with the case are the company's usual tax authorities (tax authorities of the registered seat of the company or separate department for large taxpayers).

7. In which cases would the competent authority of your jurisdiction refuse to engage / participate to the international procedure to eliminate double taxation?

There is no special rule in the local regulations nor administrative practice in this respect.

As regards the EAC, according to Article 8(1) of the EAC taken in combination with the unilateral declaration issued by Croatia when adopting it, Croatian tax authorities can refuse to open a mutual agreement procedure based on the convention in case of "serious penalty" (i.e. a penalty incurred for all taxation-related offences laid down in the Croatian General Tax Act and special tax laws, and penalty for economic crimes laid down in the Croatian Criminal Code).

Since the EAC has been in force for one year, we are not aware of cases where the Croatian tax authorities refused to open a mutual agreement procedure.

[1] The terms "international procedure to eliminate double taxation" mean the European Arbitration Convention or a mutual agreement procedure set forth by a tax treaty.

8. Is tax collection suspended during the procedure?	Tax collection will not be suspended during the procedure.
9. Assuming the procedure results in an agreement on a way to cancel double taxation, how is generally such agreement implemented in your jurisdiction?	There is no special rule in the local regulations nor practice with this respect, since the EAC only came into force as of 1 January 2015 and mutual agreements based on DTTs have seldom been used. However, based on the general tax rules in Croatia, we would expect the following: — adjustments would be implemented over the last financial year closed by the taxpayer; — the taxpayer would be entitled to default interest in case of decrease of the tax due in Croatia. As a consequence, changes in the tax liabilities would largely depend on the circumstances of the particular case.
10. In your jurisdiction, is it possible to engage concomitantly an international procedure to eliminate double taxation and litigation in front of courts? If yes, is it necessary at some stage to abandon the litigation in order to conclude / finalize the international procedure?	There is no special rule in the local regulations in this respect. Article 25 of the DTT generally allows for the procedure of elimination of double taxation to be initiated at the same time as the local (administrative court) procedures. Exception relates to the arbitration clause in DTTs between Croatia and Italy and Croatia and the Netherlands (where the court procedure needs to be abandoned).

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Czech Republic

1. In your jurisdiction, what are the legal bases for eliminating double taxation further to a transfer pricing reassessment (European Arbitration Convention, mutual agreement procedures provided for by tax treaties)? In addition to the procedures set forth by such tax treaties, is there any other (formal or informal) domestic procedure in your jurisdiction?

There are two legal bases in Czech Republic: the European Arbitration Convention and mutual agreement procedures provided for by double tax treaties.

Czech Republic has concluded only ten double tax treaties with mutual agreement procedures.

2. In addition – as the case may be – to the European Arbitration Convention, did your jurisdiction sign tax treaties with other States including an arbitration procedure? If yes, can you give the list of such States?

Czech Republic has not concluded any double tax treaty including article 25 paragraph 5 of the OECD Model Tax Convention relating to arbitration procedure.

3. In your experience, in your jurisdiction, how long does it take generally to eliminate the double taxation under the European Arbitration Convention and / or mutual agreement procedures set forth by tax treaties (and / or the domestic procedure if it exists)?

Czech Republic had 14 pending cases in 2014. The process takes approximately two years.

4. In your jurisdiction, what are the starting point and time limit to initiate a procedure to eliminate double taxation resulting from a transfer pricing reassessment?

The starting point to initiate a procedure is the notification of the reassessment. The procedure must be initiated no later than three years after the reassessment is issued. The three-year time limit is generally provided for by the tax treaty. If not, the same time limit will be used.

The advisable time for initiating the procedure is immediately after the notification is received by the taxpayer.

5. If a reassessment is issued by your tax authorities, which State must receive the application for the international procedure to eliminate double taxation[1] (your State? the other State concerned? both States?)	Czech Republic has no domestic law or guidelines in that respect: all variants are therefore possible.
6. What are the formal conditions to initiate an international procedure to eliminate double taxation? Is there a list of documents to provide? To which department of the tax authorities (name, address) must the request be sent?	Czech Republic has no guideline in this respect. Czech Ministry of finance will be involved in negotiations with foreign tax authorities.
7. In which cases would the competent authority of your jurisdiction refuse to engage / participate to the international procedure to eliminate double taxation?	Czech tax authorities will only open a procedure should the case involve another EU country or one of the ten countries which double tax treaties provide for a mutual agreement procedure (see point 1 above). With respect to the scope of the European Arbitration Convention, Czech domestic tax law considers as a transfer pricing issue all situations in which the arm´s length principle is at stake. Furthermore, Czech tax authorities may reject requests for mutual agreement procedures under the European Arbitration Convention should the reassessment be based on a breach of domestic anti-abuse rules. In particular, Czech Tax authorities may reject requests if the taxpayer is subject to a "serious penalty" (i.e. subject to detention, criminal or administrative fines) for one of the following infringement of the tax laws: a. failing to pay the charged taxes, social insurance taxes, health insurance taxes and fees for state employment policy; b. tax or similar payment evasion; c. failure to declare.
8. Is tax collection suspended during the procedure?	Tax collection is not suspended during the international procedure.
9. Assuming the procedure results in an agreement on a way to cancel double taxation, how is generally such agreement implemented in your jurisdiction?	Correlative adjustments are generally performed over the years reassessed in Republic Czech or in the other State. No interest is paid to the taxpayer where the procedure leads to a decrease of the Czech tax bill. Transfer pricing reassessment can give rise to the application of a withholding tax in Czech Republic, but not in the case of intragroup flows with EU countries, Norway, Island and Switzerland. It is not possible to obtain the cancellation of withholding tax via a "reimbursement" of the profits transferred abroad by the company which benefited from the transfer.

[1] The terms "international procedure to eliminate double taxation" mean the European Arbitration Convention or a mutual agreement procedure set forth by a tax treaty.

10. In your jurisdiction, is it possible to engage concomitantly an international procedure to eliminate double taxation and litigation in front of courts? If yes, is it necessary at some stage to abandon the litigation in order to conclude / finalize the international procedure?

If there is no risk of limitation for all parties (for example Article 9 paragraph 3 of the DTT with Spain, Finland and Canada), it is advisable not to initiate a MAP as long as litigation is pending in front of the courts.

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France

1. In your jurisdiction, what are the legal bases for eliminating double taxation further to a transfer pricing reassessment (European Arbitration Convention, mutual agreement procedures provided for by tax treaties)? In addition to the procedures set forth by such tax treaties, is there any other (formal or informal) domestic procedure in your jurisdiction?

In France, the legal bases for eliminating double taxation further to a transfer pricing reassessment are either the mutual agreement procedures (hereinafter "MAP") provided for by tax treaties[1] or the European Arbitration Convention[2] (hereinafter the "EAC").

Where applicable, a taxpayer can engage procedures simultaneously under both legal bases. The EAC is limited to transfer pricing matters involving associated enterprises established in two different European States. Applying for both procedures maximizes the protection against the risk of being deprived from the possibility to eliminate double taxation. Indeed, definition of a transfer pricing dispute may vary from one jurisdiction to another. In such a case, the mutual agreement phases pursuant to the tax treaty and the EAC would be carried out simultaneously.

There is not any other formal or informal domestic procedure in France that could lead to eliminate double taxation (except, of course, successfully challenging the reassessment issued by the French tax authorities (hereinafter "FTA") in front of the FTA or courts). In France, the amount reassessed further to a transfer pricing reassessment characterizes a deemed distribution of profit subject (depending on the tax treaty applicable) to a withholding tax. An internal procedure (article L62A of the French Tax Procedure Code) allows under certain conditions taxpayers to obtain the cancellation of such withholding tax.

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[1] As of 1st January 2015, France has signed more than 120 tax treaties.
[2] Convention of 23 July 1990 on the elimination of double taxation in connection with the adjustment of profits of associated enterprises.

2. In addition – as the case may be – to the European Arbitration Convention, did your jurisdiction sign tax treaties with other States including an arbitration procedure? If yes, can you give the list of such States?

So far, a limited number of tax treaties signed by France contain an arbitration clause. Some of them are old tax treaties for which the arbitration phase is not mandatory and, to our knowledge, has not been implemented in practice (cases of the tax treaties with Germany and Canada). The latest versions of the tax treaties with the UK and Switzerland (signed in 2008 and 2009 respectively) provide for an arbitration phase if the case has not been resolved within a certain delay and if the taxpayer requests such arbitration. The tax treaty with the US provides for an "automatic" arbitration phase (provided certain conditions are met).

3. In your experience, in your jurisdiction, how long does it take generally to eliminate the double taxation under the European Arbitration Convention and/or mutual agreement procedures set forth by tax treaties (and/or the domestic procedure if it exists)?

In theory, MAP based on the EAC should be concluded within two years following the date it was introduced. If not, an arbitration phase starts as well as (in theory) a one-year period for eliminating double taxation. In practice, in 2014, 89 cases were pending at least two years after initiation. Reasons why cases were pending two years after initiation and had not gone to arbitration were the following: some cases were pending before court[3], time limit had been waived with the taxpayer's agreement[4] or a settlement was reached but the case was awaiting for exchange of closing letters[5]. In France, in 2014, among the cases pending two years after initiation, one was supposed to reach the arbitration phase[6].

For the completion of a MAP in the framework of a tax treaty, according to the OECD the average time was around two years in 2013[7]. For France, the average time for completing the procedure (or closing without eliminating the double taxation) amounted to 30 months in 2013[8]. Time for closing the procedure may vary depending on the complexity of the case, the efficiency of the taxpayer and the other State involved.

4. In your jurisdiction, what are the starting point and time limit to initiate a procedure to eliminate double taxation resulting from a transfer pricing reassessment?

Further to a transfer pricing reassessment, the starting point of such procedures is the date of receipt by the taxpayer of the notification of a reassessment (*"proposition de rectification"* in French) which is issued at the end of the tax audit.

If the procedure is initiated under the EAC, the time limit is three years from the notification. However, if the procedure is initiated under a tax treaty, then a specific deadline, which may vary between three months and three years, is set forth by the tax treaty. Some treaties do not provide for any time limit to initiate the MAP.

Further to the receipt of the notification of a reassessment, the taxpayer has a right to discuss it with the FTA, firstly in writing, and afterwards through several meetings with the FTA. Taxpayers generally discuss the reassessment with the FTA prior to initiating any MAP or procedure under the EAC.

[3] five cases, http://ec.europa.eu/taxation_customs/taxation/company_tax/transfer_pricing/forum/index_en.htm
[4] 76 cases, same reference
[5] seven cases, same reference
[6] Same reference
[7] http://www.oecd.org/ctp/dispute/map-statistics-2006-2013.htm
[8] Same reference

5. If a reassessment is issued by your tax authorities, which State must receive the application for the international procedure to eliminate double taxation[9] (your State? the other State concerned? both States?)

In general, under the tax treaties, the case must be presented to the competent authority of the contracting State in which the entity which was exposed to a double taxation is a resident. Under the EAC, the French administrative guidelines recommend that the case be submitted to the competent authority of the contracting State which performed the transfer pricing reassessment. In practice, the MAP or procedure under the EAC should preferably be initiated in both States unless local regulations provides for specific guidelines.

6. What are the formal conditions to initiate an international procedure to eliminate double taxation? Is there a list of documents to provide? To which department of the tax authorities (name, address) must the request be sent?

Procedures to eliminate double taxation are subject to similar conditions whether they are initiated based on the EAC or a tax treaty. As indicated in the administrative guidelines[10] of the FTA, the request of a taxpayer must be sent to the *Mission d'expertise juridique et économique internationale* (hereinafter "MEJEI") and include the following information:

— Identification of the parties concerned by the transaction at stake;
— Detailed information on the relevant facts and circumstances;
— Identification of the taxes and fiscal years concerned;
— Copy of the tax collection notice and notice of reassessment leading to the alleged double taxation;
— Detailed information on the administrative and judicial procedures (if any) implemented by the parties;
— Statement of the company committing to answer in a most complete and efficient manner to every reasonable and appropriately formulated questions by any competent tax authority and to keep necessary documents available to such authorities.

In the course of the procedure, additional information may be requested by the tax authorities.

Furthermore, in the framework of the EAC, the taxpayer must provide a summary of the reasons why relations between related parties did not differ from those which would be made between independent enterprises (and thus, why the reassessment is inappropriate).

The contact details of the MEJEI are as follows:

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[9] The terms "international procedure to eliminate double taxation" mean the European Arbitration Convention or a mutual agreement procedure set forth by a tax treaty.
[10] BOI-INT-DG-20-30-20-20140218, §180 for the European Arbitration Convention and BOI-INT-DG-20-30-10-20140218, §190 for tax treaty.

7. In which cases would the competent authority of your jurisdiction refuse to engage / participate to the international procedure to eliminate double taxation?

The EAC only applies to transfer pricing issues. In that framework, the FTA reject requests for procedures based on such convention where the dispute is not relating to the arm's length principle. For instance, the FTA consider that reassessments made on the ground of Article 39, 1-3° of the French Tax Code, which limits the deductibility of interest paid to affiliated companies, are not transfer pricing disputes in the scope of the EAC[11]. The related double taxation could therefore not be eliminated through the EAC.

Note also that, to engage or participate to a MAP or EAC, the taxpayer must prove that a double taxation occurred (the reduction of losses in one country is considered as a double taxation).

The application of serious penalties, or the behaviour of the taxpayer which showed clear will to not apply the principles set forth by the tax treaty, should deprive the taxpayer from the benefit of the procedures to eliminate double taxation:

— Serious penalties are defined as criminal penalties, penalties for lack of filing a tax return after an injunction to file, bad faith or wilful default penalties, penalties for fraudulent practice, for opposing a tax audit, for hidden compensation or for abuse of law. However, a penalty for failure to provide a transfer pricing documentation does not qualify as a serious penalty.
— Another case where the FTA should refuse to engage / participate to such international procedures based on tax treaties is where the taxpayer "on its own" eliminated the double taxation by a tax adjustment and clearly evidenced thereof that it did not consider procedures provided for by tax treaties[12]. The same could be applicable for the EAC[13].

8. Is tax collection suspended during the procedure?

Tax collection is no longer suspended for procedures initiated as from 1st January 2014.

Should a taxpayer want to benefit from a deferral of tax collection, the only way is to introduce concomitantly a procedure in front of courts and apply for a tax collection deferral in that framework (however, such tax collection deferral requires that the taxpayer provides guarantees).

[11] BOI-INT-DG-20-30-20-20140218, §150.
[12] BOI-INT-DG-20-30-20-20140218, §150.
[13] BOI-INT-DG-20-30-20-20140218, §150.

9. Assuming the procedure results in an agreement on a way to cancel double taxation, how is generally such agreement implemented in your jurisdiction?

In France, corresponding adjustments are generally performed over the years reassessed in the other State.

For corresponding adjustments in France further to a reassessment in the other State, no late interest is paid to the taxpayer.

In France, a transfer pricing reassessment has in principle two impacts: additional corporate income tax (primary adjustment) and, depending on the tax treaty applicable, a withholding tax on the resulting deemed distribution (secondary adjustment). Indeed, amounts transferred abroad characterize a deemed distribution subject to withholding tax in France. French withholding tax on deemed distributions can however be cancelled if the other party to the transaction "reimburses" the reassessment and, therefore, offsets the hidden distribution.

10. In your jurisdiction, is it possible to engage concomitantly an international procedure to eliminate double taxation and litigation in front of courts? If yes, is it necessary at some stage to abandon the litigation in order to conclude / finalize the international procedure?

It is possible to engage concomitantly an international procedure to eliminate double taxation and litigation in front of French courts. It should be noted that, in the framework of the EAC, the two-year time limit for the mutual agreement phase starts after the procedure in front of a court has been abandoned.

If the MAP / procedure under the EAC results in a solution which is acceptable to the taxpayer while a case is still pending in front of the courts, the execution of the agreement requires that the taxpayer withdraws its action in front of the courts.

Should an agreement be found between the competent authorities after a court decision is made, it could only be implemented if the French taxpayer waived its right to have the decision in force.

Even if a final decision was made by a French court, it is still possible to introduce a MAP but it could not result in an agreement less favorable to the French taxpayer than the final decision of the court.

11. Any other interesting aspect not addressed above?

In 2013, France had the third highest number of new cases based on a tax treaty[14] and the third highest number of new cases based on the EAC[15]. This shows that:

— the FTA perform many reassessments leading to double taxation; and
— as a consequence, French taxpayers often apply for such procedures.

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[14] Among countries which reported data. http://www.oecd.org/ctp/dispute/map-statistics-2013.htm
[15] http://ec.europa.eu/taxation_customs/taxation/company_tax/transfer_pricing/forum/index_en.htm

Germany

1. In your jurisdiction, what are the legal bases for eliminating double taxation further to a transfer pricing reassessment (European Arbitration Convention, mutual agreement procedures provided for by tax treaties)? In addition to the procedures set forth by such tax treaties, is there any other (formal or informal) domestic procedure in your jurisdiction?

In Germany, the legal bases for eliminating double taxation due to a transfer pricing reassessment are either the mutual agreement procedure agreed in a tax treaty, or the European Arbitration Convention. It is possible to directly apply the tax treaty clause or the European Arbitration Convention, as both have been approved by local law, and sec. 2 German General Tax Code *(Abgabenordnung)* provides for a primacy of international law over national law.

As most of the tax treaties concluded by Germany include a clause on a mutual agreement procedure, the tax treaty may be applied in order to eliminate the double taxation.

To the extent that the other country is located within the European Union, the European Arbitration Convention can alternatively be applied in case of a transfer pricing reassessment resulting in a double taxation.

Consequently, as Germany is part of the European Union and has concluded more than 90 tax treaties, a bilateral procedure (or even multilateral procedure in case of the European Arbitration Convention) should be available in most cases.

In practice, a unilateral procedure is generally not carried out by the German tax authorities. Based on an explanatory document dated 5 October 2006, which has been issued in connection with advanced pricing agreements, it is stipulated that agreements on transfer pricing should not be granted to a German entity based on a unilateral procedure, if a tax treaty provides for a mutual agreement procedure. This rule seems to apply in general and to all procedures concerning cross-border transfer pricing issues. Therefore, it has to be assumed that a unilateral procedure cannot be achieved with the German tax authorities if a tax treaty including a mutual agreement procedure clause is available (which should very often be the case).

2. In addition – as the case may be – to the European Arbitration Convention, did your jurisdiction sign tax treaties with other States including an arbitration procedure? If yes, can you give the list of such States?

An arbitration procedure with the German tax authorities can be applied, in particular, based on the European Arbitration Convention. Besides this, however, some of the tax treaties concluded with Germany provide for an arbitration procedure as well. Such countries, which are partially located in the European Union, i.e. alternatively the European Arbitration Convention can be applied, are as follows:

German Tax Treaties with Arbitration Procedure	
Country	**Arbitration Clause**
Austria	obligatory
Canada	optional
France	optional
Jersey	optional
Liechtenstein	obligatory
Luxembourg	obligatory
Sweden	European Arbitration Convention for the Peaceful Settlement of Disputes; alternatively arbitration procedure
Switzerland	obligatory
The Netherlands	obligatory
UK	obligatory
U.S.A.	obligatory

3. In your experience, in your jurisdiction, how long does it take generally to eliminate the double taxation under the European Arbitration Convention and/or mutual agreement procedures set forth by tax treaties (and/or the domestic procedure if it exists)?

In case of a mutual agreement procedure, German statistics show a broad range of time relating to the duration of a mutual agreement procedure. Depending on the calendar year concerned, the average may vary between 24 and more than 27 months. However, the total range may be between "very fast" and up to four or five years. Partially, so-called "preventing requests" negatively influence the duration of the procedure, as some procedures are only opened as a precaution.

The German entity seeking for a mutual agreement procedure may positively influence the duration of the procedure by filing an application as soon as possible and by submitting full information and documentation as requested under the relevant application.

4. In your jurisdiction, what are the starting point and time limit to initiate a procedure to eliminate double taxation resulting from a transfer pricing reassessment?

Based on Guidelines issued by the German tax authorities, the application for a mutual agreement procedure should be applied as soon as the detrimental double taxation becomes obvious. It is not necessary to wait until the tax assessment notice has been issued. In practice, it is recommended to also inform the tax auditor about the planned application for a mutual agreement procedure if the double taxation seems to become the result of an ongoing tax audit.

For calculating any time limit, generally the date of receiving the relevant taxation measure (in general tax assessment notice) is decisive. In case the tax treaty does not provide any time limitation, the German tax authorities do not accept any application if a time frame of four years is exceeded.

Considering the fact that in the other country the time limitation may be calculated differently, it is recommendable to initiate any mutual agreement procedure as soon as possible, in particular if it becomes obvious that no agreement can be reached with the tax auditor.

Generally, the time frame set in a tax treaty is in line with the OECD Guidelines, i.e. the time frame is three years. However, in some cases the time limit is only two years (e.g. Belgium, Indonesia, Italy, Canada, Pakistan, Portugal and Venezuela). Concerning the US tax treaty, the time frame is four years.

5. *If a reassessment is issued by your tax authorities, which State must receive the application for the international procedure to eliminate double taxation[1] (your State? the other State concerned? both States?)*

If a tax reassessment is issued by the German tax authorities, the application for a mutual agreement procedure can be filed by the German entity or by the entity of the other State. In case a double taxation relates to the parent company and a subsidiary, it is the suggestion of the German tax authorities that the application is filed in the country of the parent company. However, this is not mandatory.

In practice, it is recommendable to file an application in all States concerned.

6. *What are the formal conditions to initiate an international procedure to eliminate double taxation? Is there a list of documents to provide? To which department of the tax authorities (name, address) must the request be sent?*

German rules for a mutual agreement procedure require that an application is filed with the responsible tax authorities. Furthermore, the application has to be filed within the applicable time frame, which is determined by the tax treaty or European Arbitration Convention. If no time frame is set, an application has to be filed within four years at the latest, generally starting after the tax assessment notice resulting in the double taxation has been received.

In their explanatory document dated 13 July 2006, the German tax authorities have included a list of documents and information to be provided in order to initiate the mutual agreement procedure. In particular, this includes a detailed description of facts and circumstances, a description of the transactions between the related parties, copies of tax assessment notices, tax audit reports and other documents being relevant in the underlying case. Furthermore, information on administrative and judicial proceedings already initiated, the reasons why the taxation should not be in line with the underlying tax treaty or European Arbitration Convention and why a double taxation is given have to be provided.

Any application has to be submitted to the following address:

> Bundeszentralamt für Steuern (Federal Central Tax Office)
> An der Küppe 1
> 53225 Bonn

The Federal Central Tax Office *(Bundeszentralamt für Steuern)* is a "superordinate higher federal authority" in the jurisdiction of the German Federal Ministry of Finance. The German Federal Ministry of Finance has transferred the responsibility concerning the implementation of mutual agreement procedures to the Federal Central Tax Office.

[1] The terms "international procedure to eliminate double taxation" mean the European Arbitration Convention or a mutual agreement procedure set forth by a tax treaty.

7. *In which cases would the competent authority of your jurisdiction refuse to engage / participate to the international procedure to eliminate double taxation?*

The German tax authorities would generally not agree on a mutual agreement procedure if the requirements, in particular concerning a time limit set in the tax treaty or in the European Arbitration Convention are not met. Furthermore, a mutual agreement procedure would not be implemented if a double taxation is the result of a non-compliance with procedural rules which have not been fulfilled, e.g. non-compliance with preclusive period. Besides this, a mutual agreement procedure can generally not be initiated if a criminal tax proceeding has been opened.

Moreover, it is necessary that the taxpayer has not waived his/her/it rights to apply for a mutual agreement procedure, e.g. in the course of an agreement with the tax auditor concerning a solution of several tax audit findings.

8. *Is tax collection suspended during the procedure?*

During a mutual agreement procedure, the German entity has generally two options:

1. It may be applied for tax collection suspension during the procedure. However, the German tax authorities may ask for a guarantee. To the extent that the tax has to be paid later, an interest of 6% per year would become due.
2. Alternatively, the tax assessed may be paid. In case of a future refund, interest of 6% per year would be paid in addition to any tax refund.

Regarding the calculation of the above-mentioned interest, it should be noted that the interest period concerning taxes on income generally starts only 15 months after the end of the relevant calendar year under dispute.

9. *Assuming the procedure results in an agreement on a way to cancel double taxation, how is generally such agreement implemented in your jurisdiction?*

After a mutual agreement procedure has been successfully closed, the German tax authorities would issue adjusted tax assessment notices concerning the relevant fiscal years. To the extent that an additional tax payment becomes due, interest of 6% per year is generally assessed in addition. However, in case of a tax refund, such tax refund is generally increased by interest of 6% per year.

To the extent that the transfer pricing reassessment also results in the application of a withholding tax, e.g. based on a hidden dividend distribution, any withholding tax refund or reduction cannot be part of the mutual agreement procedure in Germany. Instead, the procedure concerning a refund or reduction of withholding tax has to be initiated in addition, which, however, requires that a reduction or exemption of withholding tax has finally been rejected by the other State or the application was made at least two years before.

Based on German law (sec. 175a German General Tax Code/ *Abgabenordnung*), the relevant tax assessment period does not expire before one year after the result of the mutual agreement procedure has become effective. This ensures that the possibility to adjust a German tax does not expire as long as the mutual agreement procedure has not been settled.

10. In your jurisdiction, is it possible to engage concomitantly an international procedure to eliminate double taxation and litigation in front of courts? If yes, is it necessary at some stage to abandon the litigation in order to conclude / finalize the international procedure?

In Germany, it is possible to open an international mutual agreement procedure in parallel to a local procedure, e.g. administrative or judicial proceeding against a tax assessment. In practice, however, the local procedure is interrupted as long as the international procedure has not been finalized.

Under German law, any assessment, even a court decision, may become subject to an arbitration procedure and may be adjusted if this is required under the solution found through the mutual agreement procedure or the arbitration procedure (sec. 175a German General Tax Code / Abgabenordnung, sec. 110 (2) Code of Procedure of Fiscal Courts / *Finanzgerichtsordnung*).

11. Any other interesting aspect not addressed above?

Based on statistics of the German tax authorities, there are relatively few mutual agreement procedures concerning transfer pricing issues applied and initiated by Germany, compared to the total amount of mutual agreement procedures and considering the importance of transfer price adjustments in practice. For example, in 2012 about 77 (out of 277) and in 2013 about 60 (out of 267) new procedures were opened in relation to transfer pricing issues. However, the likelihood that the procedure will be implemented and finally be concluded is relatively high. Therefore, it seems to be worthwhile to go for a mutual agreement procedure if a substantial double taxation has occurred and the company wishes to eliminate such double taxation.

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India

1. In your jurisdiction, what are the legal bases for eliminating double taxation further to a transfer pricing reassessment (European Arbitration Convention, mutual agreement procedures provided for by tax treaties)? In addition to the procedures set forth by such tax treaties, is there any other (formal or informal) domestic procedure in your jurisdiction?

The transfer pricing provisions provided by the Income Tax Act of 1961[1] do not envisage the concept of correlative transfer pricing adjustment.

Most of Double Tax Treaties (hereinafter "DTTs") signed by India include provisions about mutual agreement procedures. However, only part of tax treaties includes provisions similar to Article 9 paragraph 2 of the OECD Model Tax Convention (hereinafter "OECD-MTC"). No elimination of the double-taxation deriving from a transfer pricing reassessment can be obtained in India when DTTs do not include this paragraph. India has made a statement in this respect within the OECD Commentaries on the Model Tax Convention. DTTs with Belgium, France, Germany, Italy, Singapore and Korea do not include provisions similar to Article 9 paragraph 2 of the OECD-MTC. Therefore, mutual agreement procedures are not available for transfer pricing issues arising with one associated enterprises established in one of these countries. But, for example, DTTs with the UK, the US or the Netherlands contain such a clause.

2. In addition – as the case may be – to the European Arbitration Convention, did your jurisdiction sign tax treaties with other States including an arbitration procedure? If yes, can you give the list of such States?

None of the DTTs concluded by India include an arbitration clause. However, some of the treaties that India has signed with the other countries does contain a clause in the Article dealing with 'Associated Enterprises' which enables competent authorities to consult each other to determine adjustment of profits chargeable to tax in the respective states.

3. In your experience, in your jurisdiction, how long does it take generally to eliminate the double taxation under the European Arbitration Convention and/or mutual agreement procedures set forth by tax treaties (and/or the domestic procedure if it exists)?

Mutual agreement procedures could last up to four to five years for the double taxation to be solved between the competent authorities. Duration of the procedure is neither limited by DTTs concluded by India nor by the domestic law.

[1] IT Act/Domestic law

4. *In your jurisdiction, what are the starting point and time limit to initiate a procedure to eliminate double taxation resulting from a transfer pricing reassessment?*	According to the provision included in most of the tax treaties concluded by India, the taxpayer can initiate a mutual agreement procedure within three years from the first notification of the action resulting in double taxation. Some tax treaties concluded by India do not include any time limit for initiating the mutual agreement procedure (e.g. DTTs with the UK or Egypt). In such cases, domestic provisions in the other jurisdiction should be taken into account.
5. *If a reassessment is issued by your tax authorities, which State must receive the application for the international procedure to eliminate double taxation[2] (your State? the other State concerned? both States?)*	Indian domestic law does not include any provision in this respect. Therefore, the taxpayer should follow the process indicated in the relevant DTT. Where a person considers that the actions of one or both States parties to a DTT result in a double-taxation, it may present its case to the competent authority of the State of which he is a resident or national depending on the DTT.
6. *What are the formal conditions to initiate an international procedure to eliminate double taxation? Is there a list of documents to provide? To which department of the tax authorities (name, address) must the request be sent?*	Application to the Indian tax authorities by a resident of India for a MAP should be made through the filing of the form 34F. In particular, this form should indicate the following elements: — Other country concerned and competent authority of this country; — Treaty provisions on which the procedure is based; — Name of the applicant and identification date; — Date of the notice or order giving rise to the action; — Assessment year and date of year ending; and, — Whether and why the action of the other country tax authority is not in accordance with the tax treaty. The only required supporting document is the copy of the notice or order giving rise to action.
7. *In which cases would the competent authority of your jurisdiction refuse to engage / participate to the international procedure to eliminate double taxation?*	There is no rule under Indian domestic law under which the competent authority could refuse to open a MAP.
8. *Is tax collection suspended during the procedure?*	Tax collection is not suspended during the procedure but, for example, India has concluded Memorandums of Understanding ("MoU") with the United States (in 2003) and the United Kingdom (in 2004) which provide for a suspension of tax collection for the amount concerned by the MAP to the extent a corresponding bank guarantee has been made by the taxpayer.
9. *Assuming the procedure results in an agreement on a way to cancel double taxation, how is generally such agreement implemented in your jurisdiction?*	Pursuant to Rule 44H of the Indian Income Tax Rules, a tax officer should give effect to the MAP within 90 days of receipt of the resolution by the tax authorities if the tax payer has agreed to the outcome of the MAP and has withdrawn any appeal pending on the issue.

[2] The terms "international procedure to eliminate double taxation" mean the European Arbitration Convention or a mutual agreement procedure set forth by a tax treaty.

10. In your jurisdiction, is it possible to engage concomitantly an international procedure to eliminate double taxation and litigation in front of courts? If yes, is it necessary at some stage to abandon the litigation in order to conclude / finalize the international procedure?

No Indian domestic provision restrains the right of a taxpayer to engage concomitantly a MAP and litigation in front of courts.

India has made a statement in the non-member part of the OECD commentaries on the Model Tax Convention which enables tax authorities to reach an agreement on a MAP while a domestic appeal is still pending. However, the taxpayer has to withdraw domestic action prior to accept the outcome of the MAP. Accordingly, the tax payer is not able to defer acceptance of the solution until court decision.

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Italy

1. In your jurisdiction, what are the legal bases for eliminating double taxation further to a transfer pricing reassessment (European Arbitration Convention, mutual agreement procedures provided for by tax treaties)? In addition to the procedures set forth by such tax treaties, is there any other (formal or informal) domestic procedure in your jurisdiction?

Legal bases for the elimination of double taxation in Italy are:

a. European Arbitration Convention;
b. mutual agreement procedures provided for by tax treaties

Unilateral remedies are hardly applicable when the assessment is notified to the Italian entity of the group. In this case the only unilateral remedy is to convince the Italian tax administration or the Italian tax court that transfer prices were right and the assessment is wrong.

On the contrary, if the assessment is notified to the foreign entity of the group, its Italian counterpart may invoke a unilateral remedy asking to the Italian tax administration to refund taxes paid in excess in Italy as a consequence of revenues higher than appropriate or costs lower than appropriate due to intra-group transfer pricing policies. In this case, the foreign assessment may be shown to the Italian authorities to support the refund claim.

2. In addition – as the case may be – to the European Arbitration Convention, did your jurisdiction sign tax treaties with other States including an arbitration procedure? If yes, can you give the list of such States?

Arbitration clauses have been introduced in 14 treaties out of the 92 signed by Italy. Reference is made to the treaties signed by Italy with the following countries:

1. Armenia
2. Canada
3. Croatia
4. Georgia
5. Ghana
6. Jordan
7. Kazakhstan
8. Liban
9. Moldavia
10. San Marin
11. Slovenia
12. US
13. Uganda
14. Uzbekistan

Please note that, with the sole exception of the Italy-San Marin treaty, the said arbitration clauses require that the two countries and the taxpayer express their consensus in order to start the arbitration procedure. In other words, they do not provide a mandatory arbitration.

Moreover, in five of these 13 tax treaties the arbitration procedure is also subject to an agreement between the two countries about the operational aspects of the procedure (formation of the arbitration commission, criteria for the designation of the relevant members, allocation of the relevant costs, selection of the language of the procedure, etc.). Reference is made to the treaties signed by Italy with the following countries:

1. Canada
2. Ghana
3. Kazakhstan
4. US
5. Uzbekistan

For the sake of clarity, we report hereunder the arbitration clause included in the treaties signed by Italy with Canada and the US.

Article 24, paragraph 5, of the Italy-Canada treaty signed on 3 June 2002:

"If any difficulty or doubt arising as to the interpretation or application of the Convention cannot be resolved by the competent authorities pursuant to the preceding paragraphs of this Article, the case may be submitted for arbitration if both competent authorities and the taxpayer agree and the taxpayer agrees in writing to be bound by the decision of the arbitration board. The decision of the arbitration board in a particular case shall be binding on both States with respect to that case. The procedure shall be established in an exchange of notes between the Contracting States".

Article 25, paragraph 5, of the Italy-US treaty signed on 25 August 1999:

"If an agreement cannot be reached by the competent authorities pursuant to the previous paragraphs of this Article, the case may, if both competent authorities and the taxpayer agree, be submitted for arbitration, provided that the taxpayer agrees in writing to be bound by the decision of the arbitration board. The competent authorities may release to the arbitration board such information as is necessary for carrying out the arbitration procedure. The award of the arbitration board shall be binding on the taxpayer and on both States with regard to that case. The procedures shall be finalized by the Contracting States by means of notes to be exchanged through diplomatic channels after consultation between the competent authorities. The provisions of this paragraph shall not have effect until the date specified in the exchange of diplomatic notes".

3. *In your experience, in your jurisdiction, how long does it take generally to eliminate the double taxation under the European Arbitration Convention and/or mutual agreement procedures set forth by tax treaties (and/or the domestic procedure if it exists)?*

In our experience at least three years are necessary to eliminate double taxation under the European Arbitration Convention or the mutual agreement procedure set forth by a tax treaty.

4. *In your jurisdiction, what are the starting point and time limit to initiate a procedure to eliminate double taxation resulting from a transfer pricing reassessment?*

The starting point to initiate in Italy a procedure to eliminate double taxation resulting from a transfer pricing reassessment is the notification of the reassessment. However, in many cases the assessment procedure starts with an inspection at the taxpayer's premises that is concluded by the notification to the taxpayer of the inspection report; such document may not be appealed since it only represents the position of the inspectors and is subject to further evaluation by the competent Revenue Agency office in order to eventually issue a reassessment; in these cases, the procedure to eliminate (prevent) double taxation may be initiated after the notification of the inspection report without waiting for the notification of the reassessment.

The time limit depends on the specific procedure. Usually Italian treaties provide a two years term. However, certain treaties provide different terms. For example, the Italy-France treaty provides a six months term while the Italy-UK treaty provide a three years term.

Notwithstanding the above, before initiating a procedure it is in general advisable to discuss the case with the Italian tax administration in order to see whether it is possible to convince the latter that the reassessment is fully or partly wrong.

5. *If a reassessment is issued by your tax authorities, which State must receive the application for the international procedure to eliminate double taxation[1] (your State? the other State concerned? both States?)*

The position of the Italian tax administration is that, in general, the procedure should be initiated in Italy by the Italian entity that has received the notification of the reassessment and that, if the additional taxable base reassessed in Italy has already been taxed abroad, the procedure can also be initiated abroad by the foreign entity.

6. *What are the formal conditions to initiate an international procedure to eliminate double taxation? Is there a list of documents to provide? To which department of the tax authorities (name, address) must the request be sent?*

In order to initiate an international procedure in Italy the taxpayer has to file a written claim to the Ministry of Finance. In the claim it should describe the parties involved, their relationship, the position of the tax administration and reason to contest such position. It should also file a number of documents that are substantially in line with those requested by the EU Code of Conduct of 22 December 2009.

[1] The terms "international procedure to eliminate double taxation" mean the European Arbitration Convention or a mutual agreement procedure set forth by a tax treaty.

7. In which cases would the competent authority of your jurisdiction refuse to engage / participate to the international procedure to eliminate double taxation?

Typically the Italian tax administration refuses to participate to an international procedure to eliminate double taxation when the reassessment challenges the existence or the inherence of an item of income rather than the congruity of its quantification. This may be the case, for example, when a reassessment denies the deduction of costs charged pursuant to a management service agreement. In a similar circumstance it happened that the Italian tax administration refused to initiate the procedure because the denial to deduct was grounded on the fact that the services were not rendered to the Italian entity or were not beneficial to the latter rather than on the inadequacy of the cost sharing system in place or level of mark-up adopted.

Another typical situation where the Italian tax administration is reluctant to participate to an international procedure to eliminate double taxation is represented by the existence of an agreement between the Italian entity and the Italian tax administration to settle the reassessment. Indeed, the Italian tax administration considers the settlement as final and does not accept to amend it for whatever reason, including an international procedure. In this regard please note that on 5 October 2015 the OECD has published the final report on action plan 14 (Making Dispute Resolution Mechanisms More Effective) in the context of the BEPS project. Para. 2.6 of such report states as follows: *"Countries should clarify in their MAP guidance that audit settlements between tax authorities and taxpayers do not preclude access to MAP. If countries have an administrative or statutory dispute settlement / resolution process independent from the audit and examination functions and that can only be accessed through a request by the taxpayer, countries may limit access to the MAP with respect to the matters resolved through that process. Countries should notify their treaty partners of such administrative or statutory processes and should expressly address the effects of those processes with respect to the MAP in their public guidance in such processes and in their public MAP programme guidance".* As far as we know, Italy has not made any of the above mentioned notifications so far. Moreover, the Italian tax administration has no clarified whether the "accertamento con adesione" procedure (settlement before litigation) should be considered as an "audit settlement between tax authorities and taxpayers" (that does not preclude access to MAP) or as an "administrative or statutory dispute settlement / resolution process independent from the audit and examination functions and that can only be accessed through a request by the taxpayer" (that precludes access to MAP).

Finally, the Italian tax administration typically refuses to activate the European Arbitration Convention when serious penalties have been applied. Italy has taken the view (through a unilateral declaration attached to the Arbitration Convention) that "the term 'serious penalties' means penalties laid down for illicit acts, within the meaning of the domestic law, constituting a tax offence". In line with the recommendation of the above mentioned Code of Conduct the Italian tax administration usually considers that serious penalties occur only in exceptional cases of fraudulent behaviors, generally not arising in transfer pricing cases.

8. Is tax collection suspended during the procedure?

The law does not provide any suspension of tax collection in the framework of a mutual agreement procedure initiated on the basis of a treaty. The taxpayer may however get access to the remedies ordinarily available, such as the administrative suspension or the suspension granted by a tax court. To that end, it is necessary to demonstrate that the reasons invoked by the taxpayer to oppose the reassessment are somehow grounded *(fumus boni iuris)* and that the collection would cause severe damages to the taxpayer *(periculum in mora).*

The situation is different with regard to the European Arbitration Convention. In fact, the law that has ratified the Convention provides that, while the procedure is pending, the Italian tax administration may authorize the suspension of the collection of taxes, interest and penalties. However, if the taxpayer is carrying on at the same time an appeal against the same items falling into the scope of the international procedure initiated, the authorization about the suspension of the tax collection is granted subject to condition that the taxpayer withdraws from the appeal.

9. Assuming the procedure results in an agreement on a way to cancel double taxation, how is generally such agreement implemented in your jurisdiction?

The agreement is in general implemented through a reduction (or cancellation) of the reassessment that has provoked the procedure. If the collection was not suspended, amounts already paid in excess of those due based on the reduced reassessment are refunded to the taxpayer with interest.

10. In your jurisdiction, is it possible to engage concomitantly an international procedure to eliminate double taxation and litigation in front of courts? If yes, is it necessary at some stage to abandon the litigation in order to conclude/ finalize the international procedure?

Most of the treaties entered into by Italy contain an interpretative provision saying that the mutual agreement procedure is not alternative to the national contentious proceedings, which shall be preventively initiated when the claim is related to an assessment of Italian tax not in accordance with the Convention. The parallel progress of a MAP and a domestic court appeal might potentially lead to a conflicting outcome between the domestic court judgment and the agreement achieved by the competent authorities involved. If this happens, the Italian tax administration would be unable to comply with the mutual agreement. As a result:

- should the competent authorities agree to eliminate double taxation before a judgment is issued by an Italian tax court, the taxpayer can accept this agreement, but must stop the procedure initiated in front of courts in order to give execution to the agreement;
- should a judgment be issued before the competent authorities reached an agreement, the Italian competent authority will inform its foreign counterpart of the outcome of the domestic litigation and, if double taxation has not been eliminated by the judgment, it may not be avoided unless the foreign competent authority adopts the same position expressed by the Italian tax court.

With regard to the European Arbitration Convention, as Italy is one of those jurisdictions where administrative authorities cannot deviate from the decision of a judicial body, the arbitration phase may be activated only and insofar as the deadline to file an appeal has expired, or the entreprise has withdrawn any such appeal before a decision has been delivered. Moreover, should the request for opening the procedure be submitted before withdrawing from the judgment, the two years period only runs from the date the enterprise has withdrawn from the first grade of appeal.

Accordingly, in the event the taxpayer simultaneously submits a mutual agreement procedure opening request and carries on the appeal against the reassessment, the existence of a litigation proceeding does not prevent the mutual agreement procedure to begin and/or the competent authorities to exchange views regarding the case or information on the pending judicial proceeding. However, in the event a judicial decision occurred and yet double taxation has not been eliminated, the latter will not be removed unless the foreign competent authority signs a mutual agreement consistent with the domestic judicial decision.

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Japan

1. *In your jurisdiction, what are the legal bases for eliminating double taxation further to a transfer pricing reassessment (European Arbitration Convention, mutual agreement procedures provided for by tax treaties)? In addition to the procedures set forth by such tax treaties, is there any other (formal or informal) domestic procedure in your jurisdiction?*

The legal bases of eliminating double taxation are twofold in Japan, i.e.

1. one is a mutual agreement procedure between the competent authorities of Japan and the counterpart country, pursuant to the mutual agreement provision set forth in the tax treaty between Japan and that country;
2. while the other is a domestic administrative appeals and in-court litigation procedure, pursuant to the Special Taxation Measures Law (which is the substantive tax law governing transfer pricing matters in Japan).

Generally speaking, with respect to a transaction involving the country where competent authority relief is effective (particularly advanced countries in North America and Europe), taxpayers tend to seek it. However, with respect to a transaction involving a country where competent authority relief is not effective (even if a relevant treaty allows such relief) or not available in the first place (particularly emerging countries in Asia, Africa and South America), the domestic administrative appeals and in-court litigation procedure is often virtually the only option that the taxpayer may seek.

2. *In addition – as the case may be – to the European Arbitration Convention, did your jurisdiction sign tax treaties with other States including an arbitration procedure? If yes, can you give the list of such States?*

Yes. Tax treaties with some advanced counties that are recently entered into or amended provide for an arbitration procedure, e.g., the United Kingdom, the Netherlands, Sweden, New Zealand, Portugal and Hong Kong. A recent amending protocol to the treaty with the United States and the new treaty with Germany also contain an arbitration procedure, however, these treaties have not yet entered into force.

3. *In your experience, in your jurisdiction, how long does it take generally to eliminate the double taxation under the European Arbitration Convention and / or mutual agreement procedures set forth by tax treaties (and / or the domestic procedure if it exists)?*

Mutual agreement procedures appear to generally take one to three years. Domestic administrative appeals and in-court litigation procedure could finish in about two years if the taxpayer prevails at the administrative level, but could take five to seven years in total if the matter is brought up to the Supreme Court of Japan. In any event, the length of the period significantly differs depending upon the complexity of the case.

4. *In your jurisdiction, what are the starting point and time limit to initiate a procedure to eliminate double taxation resulting from a transfer pricing reassessment?*

As to the starting point of the mutual agreement procedure, most of the tax treaty provisions point to time when the action of the Japanese government "results or will result" in taxation not in accordance with the provisions of the applicable tax treaty. However, in practice, in most cases an application for a mutual agreement procedure is filed after a formal transfer pricing assessment is issued by the Japanese tax authorities, and it appears not very common that a taxpayer does so before such transfer pricing assessment (or in the midst of the transfer pricing audit). As for the time limit, a majority of the tax treaties have a statutory limitation of two or three years, where the starting point is interpreted to be the first notice of the transfer pricing assessment.

As to the domestic administrative appeals and in-court litigation procedure, the starting point is when a formal transfer pricing assessment is issued by the Japanese tax authorities. Within two months from this assessment, a taxpayer must file an administrative appeal; otherwise the taxpayer is legally barred from disputing the assessment by the domestic procedure.

In practice, in most cases, the subject taxpayer (i) files a domestic administrative appeal only in order to reserve the track of the domestic procedure in case it becomes necessary in the future (e.g., where the mutual agreement procedure fails), within two months of the assessment, (ii) at the same time files an application for a mutual agreement procedure, and (iii) requests the relevant tax office to hold in abeyance the domestic appeals procedure until the mutual agreement procedure is finalized (whether or not it is successful or fails).

5. *If a reassessment is issued by your tax authorities, which State must receive the application for the international procedure to eliminate double taxation[1] (your State? the other State concerned? both States?)*

Technically legally speaking, when a taxpayer is subject to a transfer pricing assessment by the Japanese tax authorities, the taxpayer must file an application with the Japanese competent authority. However, in practice, in most cases an application is filed in the state of the counterparty affiliate simultaneously, by coordinating with one another.

[1] The terms "international procedure to eliminate double taxation" mean the European Arbitration Convention or a mutual agreement procedure set forth by a tax treaty.

6. What are the formal conditions to initiate an international procedure to eliminate double taxation? Is there a list of documents to provide? To which department of the tax authorities (name, address) must the request be sent?

A taxpayer who has been subject to a transfer pricing assessment by the Japanese tax authorities must file an application for a mutual agreement procedure with the Office of the Competent Authority of the National Tax Agency (hereinafter "NTA"). The procedures including required documents are stipulated in the Administrative Guidelines concerning Mutual Agreement Procedures of the NTA as well as in the Instruction on Form of Application for Mutual Agreement Procedures. Among other matters, the taxpayer must explain in detail the facts relating to the transaction that was the subject of the assessment and the taxpayer's argument to support that the taxation by the assessment is not in accordance with the tax treaty, and must attach the documents to establish the taxpayer's contentions. Documents in foreign language must accompany a Japanese translation.

7. In which cases would the competent authority of your jurisdiction refuse to engage/participate to the international procedure to eliminate double taxation?

The practice of the Office of the Competent Authority of the NTA is that it generally refuses an application for a mutual agreement procedure if the relevant assessment was made on the ground that the taxpayer made a donation to its foreign affiliate (which is nondeductible). Under Japanese tax law, transfer pricing and donation are separate taxation regimes, and a mutual agreement procedure is treated to be only available for the transfer pricing assessment. This is because a donation is only a matter of domestic tax law and has no relevance to tax treaties, on which mutual agreement procedures are based. Whether an assessment is made on the ground of transfer pricing or donation is made clear in the reasons for the assessment attached to the notice of the assessment. However, many Japanese practitioners comment that it is difficult to draw a clear line between transfer pricing and donation, and some point out that the Japanese tax authorities tend to prefer a donation with a view to effectively precluding taxpayers from a mutual agreement procedure.

Under Japanese tax laws and practice, there is no rule to preclude the taxpayer from a mutual agreement procedure if heavy penalty tax (which is imposed if the taxpayer committed concealment or fabrication of facts) is imposed on the taxpayer. However, as far as transfer pricing assessments are concerned, it is very rare that heavy penalty tax is imposed, and in most cases ordinary deficiency penalty tax is imposed. In this case the taxpayer is not precluded from a mutual agreement procedure.

8. Is tax collection suspended during the procedure?

No. Neither an application for a mutual agreement procedure or a domestic administrative appeals procedure suspends the collection or enforcement. As such, in principle, the taxpayer must once pay the full amount of the tax assessed including penalty (deficiency penalty tax) and interest (delinquency tax). Otherwise, interest (delinquency tax) continues to accrue to add burden.

However, as an exception, when the subject taxpayer files an application for a mutual agreement procedure, it may apply for temporary suspension of collection of the tax assessed, by providing certain eligible security. If the temporary suspension is granted, the collection is not made until the mutual agreement procedure is finalized (whether it is successful or fails), and interest (delinquency tax) does not accrue.

9. Assuming the procedure results in an agreement on a way to cancel double taxation, how is generally such agreement implemented in your jurisdiction?

If a Japanese taxpayer is subject to a Japanese transfer pricing assessment and if a mutual agreement is reached to cancel all or part of the assessment, the Japanese tax authorities issue a reassessment to cancel all or part of the original assessment without any action from the taxpayer.

If a foreign affiliate of a Japanese taxpayer is subject to a foreign transfer pricing assessment and if a mutual agreement is reached so that the foreign transfer pricing assessment is partially sustained, the corresponding taxable income of the Japanese taxpayer has to be reduced. For this purpose, the Japanese taxpayer must file a request for downward reassessment within two months from the mutual agreement so reached, and, based upon that request, the Japanese tax authorities make a corresponding adjustment (or a downward reassessment) to the taxable income of the Japanese taxpayer. The adjustment or reassessment is performed over the financial years reassessed in the foreign jurisdiction. Interest is not generally paid to the Japanese taxpayer in connection with the refund of the tax pertaining to the reduced taxable income.

There may arise an issue of whether or not the Japanese taxpayer should make a so-called secondary adjustment, that is, an actual remittance of money between a Japanese taxpayer and its foreign affiliate corresponding to the reassessment(s) made in accordance with the mutual agreement. Under Japanese tax law, this is not mandatory, and generally there would not arise issues of Japanese withholding tax in connection with such remittance (whereas in some other jurisdictions withholding tax issues may arise on the basis that such remittance may constitute deemed dividends).

10. In your jurisdiction, is it possible to engage concomitantly an international procedure to eliminate double taxation and litigation in front of courts? If yes, is it necessary at some stage to abandon the litigation in order to conclude / finalize the international procedure?

No. The two procedures cannot run simultaneously. If a Japanese taxpayer first prefers a mutual agreement procedure, it will so request with the Japanese competent authority, while pending the domestic procedure. If it turns out that the mutual agreement procedure would unlikely result in elimination of double taxation, the Japanese taxpayer must stick to it, or withdraw the mutual agreement procedure altogether and then turn to the domestic procedure. On the other hand, while a domestic procedure is actively pending at administrative tribunals or courts, an application for the mutual agreement procedure is not generally allowed.

11. Any other interesting aspect not addressed above?

Arbitration is rather new to Japan, so we would have to monitor how the practice develops.

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The Netherlands

1. In your jurisdiction, what are the legal bases for eliminating double taxation further to a transfer pricing reassessment (European Arbitration Convention, mutual agreement procedures provided for by tax treaties)? In addition to the procedures set forth by such tax treaties, is there any other (formal or informal) domestic procedure in your jurisdiction?

The Dutch transfer pricing rules are laid down in article 8b of the Dutch Corporate Income Tax Act (CITA). According to article 8b CITA, the prices agreed among related parties can be corrected if these prices differ from the prices that would have been agreed among non-related parties. A related party is defined as company or individual person managing, supervising or participating in the capital of another company that has significant influence over the determination of prices of the transaction between the parties.

There are two ways in which the Netherlands can eliminate double taxation arising as a result of transfer pricing adjustments in another country following a request of the taxpayer:

i. *The Dutch tax assessment can be unilaterally adjusted without consulting the treaty partner*

   A taxpayer can submit a request for an adjustment to the Dutch tax authorities (hereinafter "DTA") who will then decide, on the basis of Dutch tax legislation and the applicable tax treaty, whether the Netherlands will unilaterally renounce (part of) its tax claim. Depending on the stage of the tax (re)assessment, such a request may be filed as a request for adjustment of the taxpayer's tax return or as an objection to the (re)assessment.

   All requests have to be sent to the DTA's Coordination Group on Transfer Pricing for binding advice. If the DTA decides that elimination of double taxation is not possible by reducing the assessment, the taxpayer can still seek recourse to the legal domestic remedies available. Under Dutch law, the taxpayer has the possibility to file an objection, appeal or appeal in cassation to contest a tax assessment.

ii. *The double taxation can be eliminated after consultations with the other tax authority, either by adjustment of the Dutch assessment or otherwise*

In addition to the domestic remedies as mentioned above, it is possible to request a mutual agreement procedure or arbitration procedure. However, a mutual agreement or arbitration procedure with the other treaty partner will normally only commence once no further remedies are available under domestic law. However, the DTA offer the opportunity to request early consultations with treaty partners on a mutual agreement or arbitration procedure, i.e. before the taxpayer exhausts the remedies available in domestic law. In the vast majority of cases, initiating an 'early start-up' will eliminate double taxation at a much earlier stage.

- *Mutual Agreement procedures (hereinafter "MAP")*

  All of the treaties for the avoidance of double taxation that the Netherlands has entered into contain a clause that is comparable to Article 25 (the mutual agreement procedure) of the OECD Model Tax Convention. Taxpayers can request a mutual agreement procedure if the acts of one or two States results in double taxation. The Dutch State Secretary of Finance has published decree's (IFZ2008/248M of 29 September 2008 an IFZ2001/295 of 30 March 2001) that provide guidelines on mutual agreement procedures. As the mutual agreement procedure is a process between States, the taxpayer is officially not involved in the communication between the two States. However, the DTA will try to inform the taxpayer adequately. Note that in most Dutch tax treaties, the mutual agreement procedure does not compel competent authorities to actually reach an agreement and resolve the tax dispute.

- *Arbitration Procedures*

  A limited number of Dutch tax treaties contain provision for arbitration. In these cases, the competent authorities can agree to seek arbitration voluntarily. If the authorities agree to arbitration, the arbitration committee's decision will in almost all cases be binding, both on the competent authorities and on the taxpayer(s) involved.

  In addition to the abovementioned mutual agreement procedure and treaty arbitrations procedures, the European Arbitration Convention (hereinafter "EAC") provides an elimination of double taxation by agreement between the contracting States. If necessary, the opinion of an independent advisory body can be requested. Unlike the mutual agreement procedures and tax treaties provisions for arbitration, the Arbitration Convention obliges the participating States to eliminate double taxation.

2. In addition – as the case may be – to the European Arbitration Convention, did your jurisdiction sign tax treaties with other States including an arbitration procedure? If yes, can you give the list of such States?

As mentioned, a limited number of Dutch tax treaties contain provision for arbitration. These States are:

- Albania
- Armenia
- Bahrain
- Barbados
- Bermuda
- Canada
- Curacao
- Germany
- Egypt
- Estonia
- Ethiopia
- Ghana
- Georgia
- Hong-Kong
- Japan
- Jordan
- Kazakhstan
- Kuwait
- Croatia
- Latvia
- Lithuania
- Macedonia
- Moldavia
- Norway
- Uganda
- Ukraine
- Uzbekistan
- Poland
- Qatar
- Russian Federation
- St Martin
- Slovenia
- United Kingdom
- US
- Switzerland

3. In your experience, in your jurisdiction, how long does it take generally to eliminate the double taxation under the European Arbitration Convention and/or mutual agreement procedures set forth by tax treaties (and/or the domestic procedure if it exists)?

In our experience, the DTA are quite responsive and timely on such matters. The request for a MAP pursuant to Double Tax Treaties (hereinafter "DTTs") or the EAC will be forwarded to the other State within four weeks. The DTA are however highly dependent on the other State's cooperation. A domestic procedure will generally be handled within eight weeks if the matter is simple enough, while more complex cases might take longer.

4. In your jurisdiction, what are the starting point and time limit to initiate a procedure to eliminate double taxation resulting from a transfer pricing reassessment?

Taxpayers can file a request for a MAP pursuant to DTTs or the EAC as soon as they have a reasonable suspicion that they are or will be subjected to taxation that is not in accordance with the treaty. In principle, they can even file a request before they receive an assessment. However, bilateral consultations will only commence once the assessment has been irrevocably determined or, in the event of a request for an early mutual agreement procedure, the final assessment has been imposed by the DTA.

The position taken by the government of the Netherlands is that the request of a taxpayer is regarded as having been submitted in time if it is received within three years of either the date of the assessment containing the adjustment or of the date on which justification for the adjustment is given by the foreign State, should this be later. However, if the time limit in the mutual agreement procedure provisions contained in a treaty signed by the Netherlands differs from the general three-year period referred to above, that time limit will be respected.

5. If a reassessment is issued by your tax authorities, which State must receive the application for the international procedure to eliminate double taxation[1] (your State? the other State concerned? both States?)

In accordance with Article 25 of the OECD Model Tax Convention on which Dutch tax treaties are based, all Dutch tax treaties state that such an application must be submitted to the State of which the taxpayer is a resident.

6. What are the formal conditions to initiate an international procedure to eliminate double taxation? Is there a list of documents to provide? To which department of the tax authorities (name, address) must the request be sent?

The request for a MAP pursuant to DTTs or the EAC must include the following information:

1. Details about the taxpayer filing the request and the other parties involved, such as names, addresses and tax information numbers;
2. Information about the relevant facts and circumstances of the issue, including data regarding the association between the enterprises;
3. The other State(s) to which the request relates;
4. An explanation why there will be a situation of double taxation;
5. The tax treaty provisions involved;
6. The type of procedure to be started;
7. Information on the tax periods at issue;
8. Details of the tax authorities involved; and
9. Information about the tax (re)assessments.

If the request is for an early mutual agreement procedure, the taxpayer must formally request to postpone a decision on the objection filed against the assessment until the MAP pursuant to DTTs or the EAC has been completed.

7. In which cases would the competent authority of your jurisdiction refuse to engage / participate to the international procedure to eliminate double taxation?

The Netherlands' competent authority will refuse or suspend the request if:

— The information and documentation provided are insufficient to assess the request or to conduct a MAP pursuant to DTTs or the EAC and the taxpayer filing the request has not used the opportunity to supplement the information required;
— If the tax inspector can demonstrate that the taxpayer has not complied with the applicable administrative obligations;
— A request relating to the same issue was previously withdrawn by the taxpayer, and no new facts or altered circumstances have been demonstrated; or,
— In the event of recourse to the EAC, if a penalty has been imposed by a judge for serious tax related offenses (e.g. filling an incorrect tax return, drafting an incorrect invoice or supplying incorrect information to the DTA, all with the intention to lower the amount of tax due).

[1] The terms "international procedure to eliminate double taxation" mean the European Arbitration Convention or a mutual agreement procedure set forth by a tax treaty.

8. Is tax collection suspended during the procedure?

If the Netherlands is the state causing the double taxation, the DTA will, upon the taxpayer's request, grant a suspension of payment on that part of the tax assessment that relates to the double taxation. It should be noted that in the event of a request for an early mutual agreement procedure, deferral will automatically be granted. The deferral will in principle be granted until both the domestic and the international procedures for resolving the dispute have been completed.

9. Assuming the procedure results in an agreement on a way to cancel double taxation, how is generally such agreement implemented in your jurisdiction?

Any adjustment to the Dutch taxable base is done in accordance with the formal requirements of the General Tax Act. If possible, the adjustments are made per relevant tax year. If this is not possible, the correction is made in the last tax year for which this is possible.

In the Netherlands, transfer pricing reassessments do not give rise to secondary adjustments (where the amount reassessed is deemed distributed to the other party).

In principle, interest will be due (either by or to the taxpayer) following a MAP pursuant to DTTs or the EAC. However, under Dutch legislation it is possible for parties to deviate from the provisions in domestic law while they are consulting on a MAP. In practice, during the course of MAP pursuant to DTTs or the EAC the Netherlands' will seek to align the interest charged to the taxpayer in one state with that payable to the taxpayer in the other state, meaning that overall no interest is due or received by the taxpayer's group.

10. In your jurisdiction, is it possible to engage concomitantly an international procedure to to abandon the litigation in order to conclude / finalize the international procedure?

As mentioned, taxpayers have the possibility to file an objection, appeal or appeal in cassation to contest a tax assessment resulting either from an adjustment or from the rejection of an application of a corresponding adjustment. However, a MAP pursuant to DTTs or the EAC with the other treaty partner will normally only start once no further remedies are available in domestic law, even if in practice an early start-up will often be initiated, so a concomitant international procedure is not possible.

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Poland

1. In your jurisdiction, what are the legal bases for eliminating double taxation further to a transfer pricing reassessment (European Arbitration Convention, mutual agreement procedures provided for by tax treaties)? In addition to the procedures set forth by such tax treaties, is there any other (formal or informal) domestic procedure in your jurisdiction?

As a European Union member, Poland applies the European Arbitration Convention. As a consequence, depending on the case, the taxpayers can either rely on the European Arbitration Convention or mutual agreement procedures provided for by Double Tax Treaties (hereinafter "DTTs").

Furthermore, the Polish tax authorities before opening a mutual agreement procedure (hereinafter "MAP") have to determine if the double taxation can be avoided by local measures.

2. In addition – as the case may be – to the European Arbitration Convention, did your jurisdiction sign tax treaties with other States including an arbitration procedure? If yes, can you give the list of such States?

Most of the DTTs include the arbitration clause (usually section 9.2). The DTTs with the following states do not include the arbitration clause: France, China, Greece, Israel, Japan, Russia, Switzerland, the US, Hungary, Italy.

3. In your experience, in your jurisdiction, how long does it take generally to eliminate the double taxation under the European Arbitration Convention and/or mutual agreement procedures set forth by tax treaties (and/or the domestic procedure if it exists)?

To the best of our knowledge, in Poland, at the end of 2013, there were around ten pending cases under the European Arbitration Convention and 40 pending cases under tax treaties. However, according to the Polish local regulations on MAP, the procedure should not take more than two years.

4. In your jurisdiction, what are the starting point and time limit to initiate a procedure to eliminate double taxation resulting from a transfer pricing reassessment?

Taxpayer should file application to initiate the procedure within three years from the protocol or decision on reassessment of the tax authorities which will or may lead to double taxation. The same time limit is provided for most of the DTTs signed by Poland, except for treaties signed with the United Kingdom (which extends it to six years) and Italy (which limits it to two years).

It seems that it is advisable to file the application as soon as possible, because parallel to the procedure, the taxpayer should challenge the reassessment in front of the tax authorities' higher instance. Opening the procedure will make additional pressure on the tax authorities to take into account the argumentation of the taxpayer.

5. If a reassessment is issued by your tax authorities, which State must receive the application for the international procedure to eliminate double taxation[1] (your State? the other State concerned? both States?)	The taxpayer should file the application with the Polish tax authorities and the Polish tax authorities should notify the other State's tax authorities.
6. What are the formal conditions to initiate an international procedure to eliminate double taxation? Is there a list of documents to provide? To which department of the tax authorities (name, address) must the request be sent?	The application should include: — Contact details of the Polish taxpayer and the related entities concerned; — Description of the situation; — Indication of the tax year concerned; — Copies of relevant decisions / protocols; — Information on appeal procedure initiated by the taxpayer; — Identification of the legal basis of application (in particular Article 4 of the Convention); — Statement confirming the commitment to disclose any documentation and information relevant in the proceeding. The application should be filed with the Polish Ministry of Finance (ul. Świętokrzyska 12, 00-916 Warszawa).
7. In which cases would the competent authority of your jurisdiction refuse to engage / participate to the international procedure to eliminate double taxation?	Only if the formal criteria was not met.
8. Is tax collection suspended during the procedure?	No.
9. Assuming the procedure results in an agreement on a way to cancel double taxation, how is generally such agreement implemented in your jurisdiction?	The tax law is not clear on the implementation. The agreement between tax authorities should provide for the method to eliminate double taxation. There is no legal basis to claim penal interest, but taking into account the logic of this system interest should be due.
10. In your jurisdiction, is it possible to engage concomitantly an international procedure to eliminate double taxation and litigation in front of courts? If yes, is it necessary at some stage to abandon the litigation in order to conclude / finalize the international procedure?	No.

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[1] The terms "international procedure to eliminate double taxation" mean the European Arbitration Convention or a mutual agreement procedure set forth by a tax treaty.

Portugal

1. In your jurisdiction, what are the legal bases for eliminating double taxation further to a transfer pricing reassessment (European Arbitration Convention, mutual agreement procedures provided for by tax treaties)? In addition to the procedures set forth by such tax treaties, is there any other (formal or informal) domestic procedure in your jurisdiction?

In Portugal, in the framework of intragroup flows between related parties both established in Portugal, the Corporate Income Tax Code (hereinafter **"CIT Code"**) and Ministerial Order (hereinafter **"Portaria"**) 1446-C/2001, of 21 December 2001, determine that between related parties that are both liable to Portuguese CIT any adjustment to the taxable income of one must be reflected by a corresponding adjustment to the taxable income of the other. Between two Portuguese domiciled entities, the Portuguese Tax Authorities (hereinafter **"PTA"**) officiously promotes the correlative adjustments.

When the adjustment affects transactions between a Portuguese entity and a nonresident entity, rather than establishing a specific and mandatory mechanism to avoid double taxation, domestic legislation refers to international conventions, which means that the elimination of double taxation depends on the procedures laid down in the Double Tax Treaties (hereinafter **"DTT"**) entered into between Portugal and other States – which follow the OECD model – and the European Arbitration Convention.

Pursuant to Articles 63 (12) of the CIT Code and 17 (2) of Ministerial Order 1446-C/2001, the PTA is not obliged to start a unilateral procedure to avoid double taxation deriving from transfer pricing adjustments. However, the Portuguese taxpayer can trigger this procedure by submitting a request to the Director-General of the PTA. Once the taxpayer's request is received, the PTA must contact the foreign authorities and exchange information in accordance with Article 25 of the DTT. Following the exchange of information, should the PTA and the foreign authorities reach an agreement on the adjustments, within 120 days the PTA implements the appropriate adjustments to the Portuguese taxpayer's income, refunding tax in excess.

2. In addition – as the case may be – to the European Arbitration Convention, did your jurisdiction sign tax treaties with other States including an arbitration procedure? If yes, can you give the list of such States?	To the present day Portugal has only incorporated the arbitration clause in the DTT entered into with Japan. Consequently, when the European Arbitration Convention is not applicable the decision whether to perform a correlative adjustment lies within the sole discretion of the tax authorities involved in the Mutual Agreement Procedure provided for by a DTT.
3. In your experience, in your jurisdiction, how long does it take generally to eliminate the double taxation under the European Arbitration Convention and / or mutual agreement procedures set forth by tax treaties (and / or the domestic procedure if it exists)?	It is difficult to estimate the time a Mutual Agreement Procedure (hereinafter **"MAP"**) may take, as it depends on different factors such as the complexity of the case, the documentation requested by the tax inspector and the pace of the authorities involved in the procedure. Under normal conditions the procedure is likely to be concluded within 1.5 to 2 years timeframe.
4. In your jurisdiction, what are the starting point and time limit to initiate a procedure to eliminate double taxation resulting from a transfer pricing reassessment?	In both procedures – i.e. a MAP under the European Arbitration Convention or under the DTT – the *starting point* for the calculation of the time limit to initiate a procedure is the notification of the action which results or is likely to result in double taxation, which corresponds to the first tax assessment notice or equivalent. The *time limit* varies depending on the provisions set out on the DTT (when applicable) or the European Arbitration Convention (three years).
5. If a reassessment is issued by your tax authorities, which State must receive the application for the international procedure to eliminate double taxation[1] (your State? the other State concerned? both States?)	As per Article 18 (1) of Ministerial Order 1446-C/2001, a Portuguese resident is entitled to apply for a MAP *before the PTA* when a reassessment is issued by the PTA, as well as when a foreign authority officially proposes to perform adjustments to a nonresident related party and this will lead or is likely to lead to a breach of international conventions (DTT's) signed by Portugal.
6. What are the formal conditions to initiate an international procedure to eliminate double taxation? Is there a list of documents to provide? To which department of the tax authorities (name, address) must the request be sent?	The written application to start an international procedure is not subject to specific formal requirements. The Portuguese taxpayer should provide the information specified in the Code of Conduct on European Arbitration Convention and in Article 18 (2) of Ministerial Order 1446-C/2001, namely: — Full identification of the applicant and the nonresident related party; — Identification of the competent foreign authority; — Description of the relevant facts and circumstances of the case; — Identification of the tax period(s) concerned; — Statement why the principles set out in the European Arbitration Convention or DTT have not been observed; — Proposal concerning one or more solutions for the purpose of solving the case. The competent authority is "DSRI – Direção de Serviços de Relações Internacionais", a department of the PTA located at Avenida Engenheiro Duarte Pacheco, 28 – 4, 1099-013 Lisbon, Portugal.

[1] The terms "international procedure to eliminate double taxation" mean the European Arbitration Convention or a mutual agreement procedure set forth by a tax treaty.

7. In which cases would the competent authority of your jurisdiction refuse to engage / participate to the international procedure to eliminate double taxation?

Prior to the commencement of any procedure, the PTA analyzes the information and documentation presented by the taxpayer in order to determine whether the material requirements are fulfilled. In accordance with Article 19 (1) of Ministerial Order 1446-C/2001, the PTA may refuse to review the case and start a procedure in certain conditions, such as:

— Non-existence of a current or potential double taxation in breach of international conventions;
— When the application was not presented within the time limit;
— Lack of sufficient documentation to determine the exact amount of the adjustments.

Furthermore, in the framework of the European Arbitration Convention, "serious penalties" disable the tax payer from benefiting of the European Arbitration Convention. "Serious penalties" for the purposes of the European Arbitration Convention means criminal and administrative penalties applicable to tax infringements defined by law as serious or committed with the intent to defraud, subject to the Portuguese General Taxation Infringements Law.

8. Is tax collection suspended during the procedure?

There are no specific provisions in respect of additional assessments based on transfer pricing rules, especially in the framework of MAP.

Generally speaking, pursuant to domestic legislation, challenging an assessment does not prevent from the collection of tax. Suspension of collection measures is granted only upon the provision of a guarantee (e.g. bank guarantee, mortgage) by the taxpayer. In addition, late payment interest is due, currently at a 5.476% annual rate.

9. Assuming the procedure results in an agreement on a way to cancel double taxation, how is generally such agreement implemented in your jurisdiction?

Correlative adjustments in Portugal are performed over the tax periods affected by the transaction, i.e. over the years reassessed. Should the international procedure result in a reduction of the tax burden, the taxpayer is entitled to claim the payment of interest at a 4.00% annual rate on the amount paid in excess.

Due to the non-existence of specific provisions in the Portuguese law regarding secondary adjustments, such adjustments are not authorized.

10. In your jurisdiction, is it possible to engage concomitantly an international procedure to eliminate double taxation and litigation in front of courts? If yes, is it necessary at some stage to abandon the litigation in order to conclude / finalize the international procedure?

The taxpayer is entitled to initiate a MAP and simultaneously challenge the assessment performed by the PTA through an administrative / court procedure. However, it is advisable to request the suspension of the national administrative / court procedure until the MPA is decided.

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Romania

1. In your jurisdiction, what are the legal bases for eliminating double taxation further to a transfer pricing reassessment (European Arbitration Convention, mutual agreement procedures provided for by tax treaties)? In addition to the procedures set forth by such tax treaties, is there any other (formal or informal) domestic procedure in your jurisdiction?

In the framework of cross-border transactions, the domestic legislation foresees two options for eliminating double taxation further to a transfer pricing reassessment:

- Mutual Agreement Procedures (hereinafter "MAP") as provided by double tax treaties (hereinafter "DTTs") concluded by Romania with other countries; and,
- MAP under the European Arbitration Convention (hereinafter "EAC") for European Union Member States.

There are no other formal or informal domestic procedures for eliminating double taxation except for domestic transactions where the law provides for a procedure for correlative adjustments.

2. In addition – as the case may be – to the European Arbitration Convention, did your jurisdiction sign tax treaties with other States including an arbitration procedure? If yes, can you give the list of such States?

Romania has neither tax treaty that includes a mandatory arbitration clause nor that includes a non-mandatory arbitration clause.

3. In your experience, in your jurisdiction, how long does it take generally to eliminate the double taxation under the European Arbitration Convention and / or mutual agreement procedures set forth by tax treaties (and / or the domestic procedure if it exists)?

So far, more than two years.

However, as far as we know, few cases were initiated, either under DTTs or the EAC.

4. In your jurisdiction, what are the starting point and time limit to initiate a procedure to eliminate double taxation resulting from a transfer pricing reassessment?

In Romania, the procedure can be initiated in general within three years from the date of receiving the reassessment decision issued by the tax authorities, which will or may lead to double taxation. Under MAP the provisions of the relevant DTT should be checked as it may provide for a different timeframe.

	Additionally, if the taxpayer engages in court litigation and a negative final court decision is issued, there might be the case that the competent authority will refuse to engage/participate to the international procedure to eliminate double taxation.
8. Is tax collection suspended during the procedure?	Tax collection is not suspended during the procedure.
9. Assuming the procedure results in an agreement on a way to cancel double taxation, how is generally such agreement implemented in your jurisdiction?	The law does not describe the implementation of the agreement to cancel double taxation. In any circumstance, no interest will be paid to the taxpayer.
10. In your jurisdiction, is it possible to engage concomitantly an international procedure to eliminate double taxation and litigation in front of courts? If yes, is it necessary at some stage to abandon the litigation in order to conclude/finalize the international procedure?	Yes, but the international procedure will be suspended until a court decision is issued. Please also refer to our comment made under question 7 above.

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The moment of initiating the procedure would depend on each case circumstances. If it seems there are good chances to be successful during the administrative challenge phase, the initiation of the procedure could be postponed until the result of the challenge is known. Otherwise, the procedure can be initiated immediately after the receipt of the reassessment decision issued by the tax authority.

5. *If a reassessment is issued by your tax authorities, which State must receive the application for the international procedure to eliminate double taxation[1] (your State? the other State concerned? both States?)*

Best practice is to notify both states.

6. *What are the formal conditions to initiate an international procedure to eliminate double taxation? Is there a list of documents to provide? To which department of the tax authorities (name, address) must the request be sent?*

The authority to which a MAP request must be addressed is the Romanian National Agency for Fiscal Administration (17 Apolodor St, Bucharest 050741).

The procedure and the list of documents to provide are in line with the provisions of the Convention on the elimination of double taxation in connection with the adjustment of profits of associated enterprises (90/436/EEC) and the Revised Code of Conduct for the effective implementation of the Convention on the elimination of double taxation in connection with the adjustment of profits of associated enterprises (2009/C 322/01).

The Romanian law provides for the same procedure in both situations and makes reference to the same list of documents. The list of documents has not been published yet. The Romanian Tax Authorities are supposed to issue a guideline in this respect.

7. *In which cases would the competent authority of your jurisdiction refuse to engage/participate to the international procedure to eliminate double taxation?*

Dispute resolution under the EAC would not be initiated and/or may be suspended if one of the enterprises involved is subject to a "serious penalty" for the transactions giving rise to the profit adjustment.

The declaration of Romania on the definition of "serious penalty" (Official Journal L 174, 03/07/2008 P. 0001 – 0005) is:

"The term "serious penalty" includes the commission of any criminal act provided by the tax evasion law or the accountancy law or the company law or the tax legislation. It also includes administrative penalties assessed in respect to:
— refusal to submit the tax returns or the informative statements at the request of the tax authorities;
— refusal to supply documents and records requested by the tax inspectors;
— failing to file the periodical financial documents and accounting reports or submitting such documents or reports which include incorrect data;
— actions included in the tax record, according to the legislation in force."

[1] The terms "international procedure to eliminate double taxation" mean the European Arbitration Convention or a mutual agreement procedure set forth by a tax treaty.

Russia

1. In your jurisdiction, what are the legal bases for eliminating double taxation further to a transfer pricing reassessment (European Arbitration Convention, mutual agreement procedures provided for by tax treaties)? In addition to the procedures set forth by such tax treaties, is there any other (formal or informal) domestic procedure in your jurisdiction?

Russian Transfer Pricing (hereinafter "TP") legislation contains restrictions regarding implementation of TP adjustments in Russia. More specifically, TP adjustments leading to decrease of tax liabilities in Russia are prohibited under the Russian law.

Implementation of symmetrical TP adjustments following to the related counterparty's taxable base reassessment is allowed solely in case when both of the parties to the transaction are Russian companies (i.e. for the domestic intragroup transactions).

This being said, Russian domestic TP legislation does not provide for the mechanisms allowing to adjust Russian taxpayers' taxable base following to the transfer pricing reassessment performed abroad in relation to their foreign counterparties.

The general mechanism of double taxation elimination is provided in the Double Tax Treaties (hereinafter "DTTs") entered into by Russian Federation (e.g. in Articles 9, 23 and 25 of Russia-France DTT). However, the mechanism of mutual agreement procedures prescribed by the DTTs is used in Russia on a very exceptional basis. To the best of our knowledge, no such cases concerning the transfer pricing reassessment exist to date.

In addition, implementation of such mutual agreement procedures is to a very little extent regulated by Russian legislation in force, thus the issues regarding the term and course of such procedures are decided on a case-by-case basis.

2. In addition – as the case may be – to the European Arbitration Convention, did your jurisdiction sign tax treaties with other States including an arbitration procedure? If yes, can you give the list of such States?

Russia is not a party to any DTT including arbitration provisions.

3. In your experience, in your jurisdiction, how long does it take generally to eliminate the double taxation under the European Arbitration Convention and / or mutual agreement procedures set forth by tax treaties (and / or the domestic procedure if it exists)?	Russian tax legislation does not provide for any prescribed terms of the mutual agreement procedure. Since, as indicated above, such procedures are rarely entered into by Russian tax authorities, it is difficult to define the term of such procedure in practice.
4. In your jurisdiction, what are the starting point and time limit to initiate a procedure to eliminate double taxation resulting from a transfer pricing reassessment?	These issues are regulated by the relevant DTTs with the states concerned. For example, in accordance with Russia-France DTT the application is to be filed within three years from the first notification of the action resulting in the double taxation. Russian legislation does not provide for any specific regulations concerning the moment when the procedure should be initiated, apart from the terms prescribed by the relevant DTTs.
5. If a reassessment is issued by your tax authorities, which State must receive the application for the international procedure to eliminate double taxation[1] (your State? the other State concerned? both States?)	The application is received by the state of residency of the affected party. In practice, the mutual agreement procedures initiated within the foreign tax authorities are usually more successful in Russia.
6. What are the formal conditions to initiate an international procedure to eliminate double taxation? Is there a list of documents to provide? To which department of the tax authorities (name, address) must the request be sent?	Russian tax legislation does not provide for strict requirements concerning the implementation of the mutual agreement procedure. The competent authority which is responsible for the mutual agreement procedure cases is the Ministry of Finance of the Russian Federation. Persons who may present their cases to the competent authority for initiating the mutual agreement procedure are: — Russian tax residents; — Russian citizens. The application is presented as a personal written request in a free form. The terms of application are provided in the respective DTTs. There are no particular formal requirements concerning the documentation that need to be presented by the party concerned to justify of its position. However, Russian tax authorities would expect the appropriate relevant documentation to be provided (copies of contracts and other documents related to the issue being object of the mutual assistance procedure, correspondence with the Russian tax authorities and tax authorities of other states concerned, etc.).

[1] The terms "international procedure to eliminate double taxation" mean the European Arbitration Convention or a mutual agreement procedure set forth by a tax treaty.

7. In which cases would the competent authority of your jurisdiction refuse to engage / participate to the international procedure to eliminate double taxation?	Russian tax legislation contains neither provisions binding Russian tax authorities to engage the mutual assistance procedure, nor any clear guidance on grounds at which Russian tax authorities may refuse to initiate such procedure. Thus the issue in question is a grey area from Russian law perspective, which leaves to the discretion of the tax authorities whether or not to initiate the mutual agreement procedure. Keeping in mind that mutual agreement procedure is usually initiated upon written application of the taxpayer, we may reasonably suppose it is unlikely that the competent authority would accept to initiate such a procedure should the taxpayer fail to provide necessary evidence and (or) documents justifying its position. In practice Russian tax authorities usually get involved in the mutual procedures initiated by other contracting states.
8. Is tax collection suspended during the procedure?	Tax collection is not suspended.
9. Assuming the procedure results in an agreement on a way to cancel double taxation, how is generally such agreement implemented in your jurisdiction?	Russian tax legislation remains silent on the way the results of the mutual agreement procedure should be formalized in Russia, which leaves much to the discretion of Russian tax authorities involved in such procedure. In practice Russian Ministry of Finance usually issues the letter formalizing the results of the mutual agreement procedure which becomes binding for the tax authorities. In case Russian tax authorities would refuse to implement the results of the mutual agreement procedure, the taxpayer concerned should theoretically seek remedy in court. However, we are unaware of such cases in practice.
10. In your jurisdiction, is it possible to engage concomitantly an international procedure to eliminate double taxation and litigation in front of courts? If yes, is it necessary at some stage to abandon the litigation in order to conclude / finalize the international procedure?	No specific regulations regarding this issue exist in Russia.

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Serbia

1. *In your jurisdiction, what are the legal bases for eliminating double taxation further to a transfer pricing reassessment (European Arbitration Convention, mutual agreement procedures provided for by tax treaties)? In addition to the procedures set forth by such tax treaties, is there any other (formal or informal) domestic procedure in your jurisdiction?*

Legal bases for eliminating double taxation in Serbia are mutual agreement procedures provided by double tax treaties (hereinafter **"MAP"**) and administrative procedures in accordance with the domestic law.

By contrast, Serbia does not apply the European Arbitration Convention. Furthermore, the double tax treaty signed with Malaysia is the only treaty that does not provide for MAP.

2. *In addition – as the case may be – to the European Arbitration Convention, did your jurisdiction sign tax treaties with other States including an arbitration procedure? If yes, can you give the list of such States?*

Serbia does not have an arbitration clause in any of its double tax treaties.

3. *In your experience, in your jurisdiction, how long does it take generally to eliminate the double taxation under the European Arbitration Convention and/or mutual agreement procedures set forth by tax treaties (and/or the domestic procedure if it exists)?*

The length of MAP depends on many factors such as complexity of the case, availability of documentation, standpoints of the tax authorities, etc. In practice, it usually takes a few months to eliminate the double taxation via MAP.

4. *In your jurisdiction, what are the starting point and time limit to initiate a procedure to eliminate double taxation resulting from a transfer pricing reassessment?*

The starting point for calculation of the time limit for initiating a MAP is the notification of a reassessment.

The time limit for initiating a MAP is five years in the framework of the double tax treaties signed with the Netherlands and Norway), two years (in the framework of the double tax treaties signed with Italy and Indonesia), no time limit (in the framework of the double tax treaties signed with the UK, France and Sweden), while for all other countries which have a double tax treaty with Serbia the time limit is three years.

Still, even for countries without a time limit provided for by the double tax treaty, the statute of limitation provided for by domestic law would generally apply (five years, starting from the beginning of the year following the year in which the reassessment was done).

Pursuant to the provisions of the tax treaties, an agreement on a way to cancel double taxation is applicable regardless of any time limitations imposed by the domestic law. By way of exception, such a provision is not specified in the double tax treaties signed with the UK, France, Italy, the Netherlands, Belgium, Sweden, Indonesia and Montenegro. As a result, time limitations could apply in that framework.

It is advisable to initiate the MAP after the discussion with the tax authorities, but prior to the issuance of the tax bill.

5. *If a reassessment is issued by your tax authorities, which State must receive the application for the international procedure to eliminate double taxation[1] (your State? the other State concerned? both States?)*

The State of the other taxpayer's residence must first receive the application. The State which received the application will then notify it to the competent authority in Serbia and initiate MAP.

6. *What are the formal conditions to initiate an international procedure to eliminate double taxation? Is there a list of documents to provide? To which department of the tax authorities (name, address) must the request be sent?*

Formal conditions for initiating MAP are the following:

1. MAP is initiated by the competent authority of the other State should the reassessment be performed abroad or in Serbia;
2. taxpayer seeking protection under the double tax treaty is a resident or citizen of the other State;
3. time limit for initiating a MAP pursuant to a double tax treaty or statute of limitation pursuant to the domestic law has not expired.

There is no list of documents to provide for MAP purposes. In practice, the tax authorities require all the relevant documents to be submitted immediately.

The request is sent to the Serbian Ministry of Finance by the competent authority of the other State.

7. *In which cases would the competent authority of your jurisdiction refuse to engage / participate to the international procedure to eliminate double taxation?*

The Serbian Ministry of Finance may refuse to engage or participate in a MAP if the conditions provided for by the applicable double tax treaty are not met (time limit was exceeded, the person is not a resident or a citizen of the other State), the MAP was not initiated by the competent authority of the other State and if reassessment was due to tax evasion.

8. *Is tax collection suspended during the procedure?*

No, tax collection is generally not suspended during the procedure. However, the tax collection may be suspended upon the request from a taxpayer and subject to the discretionary approval of the tax authorities.

[1] The terms "international procedure to eliminate double taxation" mean the European Arbitration Convention or a mutual agreement procedure set forth by a tax treaty.

9. Assuming the procedure results in an agreement on a way to cancel double taxation, how is generally such agreement implemented in your jurisdiction?	The agreement is implemented via an official decision from the Serbian Tax Administration. Correlative adjustments are generally performed in Serbia over the years reassessed in the other State. No interest is paid to the taxpayer. Transfer pricing reassessment may trigger withholding tax as a secondary adjustment. However, certain DTTs concluded by Serbia have provisions which do not allow the application of a withholding.
10. In your jurisdiction, is it possible to engage concomitantly an international procedure to eliminate double taxation and litigation in front of courts? If yes, is it necessary at some stage to abandon the litigation in order to conclude/ finalize the international procedure?	Yes, it is possible to engage concomitantly in a MAP and in a litigation in front of the Administrative Court. It is not necessary to abandon the litigation in order to conclude the international procedure, but the tax authorities may choose to suspend the international procedure until the decision from the Administrative Court.
11. Any other interesting aspect not addressed above?	The outbound reimbursement (e.g. from a Serbian to a French entity), reimbursing an adjustment in France by the French Tax Authorities could trigger additional withholding on this amount.

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Slovenia

1. In your jurisdiction, what are the legal bases for eliminating double taxation further to a transfer pricing reassessment (European Arbitration Convention, mutual agreement procedures provided for by tax treaties)? In addition to the procedures set forth by such tax treaties, is there any other (formal or informal) domestic procedure in your jurisdiction?

The legal bases for eliminating double taxation further to a transfer pricing reassessment are either the European Arbitration Convention (hereinafter "EAC") or the mutual agreement procedures (hereinafter "MAP") provided for by Double Tax Treaties (hereinafter "DTTs"). No additional, domestic and unilateral procedure, for elimination of double taxation further to a transfer pricing reassessment is available to Slovenian tax residents.

2. In addition – as the case may be – to the European Arbitration Convention, did your jurisdiction sign tax treaties with other States including an arbitration procedure? If yes, can you give the list of such States?

The DTTs signed with Italy, Switzerland and the Netherlands include an arbitration clause.

3. In your experience, in your jurisdiction, how long does it take generally to eliminate the double taxation under the European Arbitration Convention and/or mutual agreement procedures set forth by tax treaties (and/or the domestic procedure if it exists)?

Since the practice in respect of MAP/EAC is limited in Slovenia, it is difficult to make any estimate as to the average processing time in this regard. Based on information received informally, such process of elimination of double taxation depends on the complexity of the case and the level of cooperation available between parties interested.

4. In your jurisdiction, what are the starting point and time limit to initiate a procedure to eliminate double taxation resulting from a transfer pricing reassessment?

Note that there are no domestic guidelines or special administrative arrangements governing MAP, i.e. there is no form of request or documentation requirement prescribed. The local law does not determine any deadline for filing the application, but leaves this to be determined by DTTs.

The majority of the DTTs in force set the deadline at three years after the first formal notification was received. The deadline prescribed by DTTs with Italy and Canada is two years while under the DTTs with the US and Norway it is five years. DTTs with Sweden, the UK and Northern Ireland do not prescribe any deadlines.

	Note the general five-year statute of limitation for tax assessment should be observed. In practice, MAP should be closed within five years following the closing of the accounts unless MAP is started by foreign competent authorities. When a MAP is started by foreign competent authorities, the general statute of limitation prescribed does not apply.
5. If a reassessment is issued by your tax authorities, which State must receive the application for the international procedure to eliminate double taxation[1] (your State? the other State concerned? both States?)	In each case where their tax basis is affected, Slovenian tax residents should file the application with the Slovenian Ministry of Finance.
6. What are the formal conditions to initiate an international procedure to eliminate double taxation? Is there a list of documents to provide? To which department of the tax authorities (name, address) must the request be sent?	There are no domestic guidelines or special administrative arrangements governing MAP, i.e. there is no form of request or documentation requirement prescribed, hence the only formal condition is the claim that the actions of one or both contracting states result or will result in taxation not in accordance with the provisions of the DTT. The request for MAP should be sent to the Slovenian Ministry of finance at: Ministrstvo za finance Republike Slovenije Direktorat za sistem davčnih carinskih in drugih javnih prihodkov Župančičeva 3 1000 Ljubljana Slovenia
7. In which cases would the competent authority of your jurisdiction refuse to engage / participate to the international procedure to eliminate double taxation?	When the tax reassessment was issued pursuant to a tax audit where irregularities falling under severe tax offence category were established, the competent authority may refuse the application for MAP under a DTT or the EAC. The definition of a severe tax offence applies to cases where the damage caused by a tax offence is severe, where the amount of funds gained unlawfully is significant or where the taxpayer's intent to commit a tax offence is established. Furthermore, EAC is limited to transfer pricing disputes. Even though there is no formal definition of a transfer pricing dispute, the latter term is generally applied to tax disputes in respect of application of the arm's length principle.
8. Is tax collection suspended during the procedure?	In Slovenia the provisions relating to tax collection and interest charges are governed by the Tax Procedure Act. According to applicable provisions, tax is collected and interest is charged notwithstanding the type of remedy used (domestic litigation procedure or dispute resolution procedure under the EAC or DTT).

[1] The terms "international procedure to eliminate double taxation" mean the European Arbitration Convention or a mutual agreement procedure set forth by a tax treaty.

9. Assuming the procedure results in an agreement on a way to cancel double taxation, how is generally such agreement implemented in your jurisdiction?

After the decision of MAP is reached, the taxpayer should request the execution of the decision no later than 12 months after the adoption of the decision.

Correlative adjustments are, for years open to audit, generally performed over the years reassessed. For secondary adjustments, withholding tax paid may be reclaimed.

If the outcome is favorable to the taxpayer, the taxpayer is being reimbursed for the tax collected with interest.

10. In your jurisdiction, is it possible to engage concomitantly an international procedure to eliminate double taxation and litigation in front of courts? If yes, is it necessary at some stage to abandon the litigation in order to conclude/finalize the international procedure?

Filing for MAP is allowed irrespective of other remedies still being available under Slovenian tax law. Initiating MAP has a priority over the national procedures. In line with applicable case law, any legal procedure started before the Slovenian court is suspended until the MAP is completed. Once the MAP decision is completed, the procedure before the Slovenian national court may be continued or terminated depending on the MAP decision.

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Spain

1. In your jurisdiction, what are the legal bases for eliminating double taxation further to a transfer pricing reassessment (European Arbitration Convention, mutual agreement procedures provided for by tax treaties)? In addition to the procedures set forth by such tax treaties, is there any other (formal or informal) domestic procedure in your jurisdiction?

In Spain, regulations concerning direct taxation-related mutual agreement procedures (hereinafter "MAPs") are established in Royal Decree 1794/2008 (hereinafter "RD").

Said RD regulates the rules that the Spanish tax authorities must follow in order to solve cases of double taxation together with the other Tax Authorities involved. In this respect, two types of procedures can be found in RD 1794/2008:

- The procedure relating to the implementation of the European Convention of July, 1990 on the elimination of double taxation in connection with the adjustment of profits of associated enterprises (90/436/EEC), (hereinafter the "EAC"); and
- The procedure provided for in the Double tax treaties (hereinafter the "DTT") signed by Spain to resolve cases of taxation not in accordance with the treaty, which prevails in situations where a non-European country with which Spain has signed a Treaty is involved.

Aside from the above, Spain does not provide for internal solutions for avoiding double taxation deriving from foreign transfer pricing adjustments.

2. In addition – as the case may be – to the European Arbitration Convention, did your jurisdiction sign tax treaties with other States including an arbitration procedure? If yes, can you give the list of such States?

Spain has concluded only one treaty containing an arbitration clause: tax treaty with Chile, which was signed on 7 April 2003. However, its arbitration clause has a very limited scope, applicable only with regard to the application of the General Agreement on Trade in Services (GATS).

Furthermore, the new version of the DTT between Spain and the US would introduce mandatory binding arbitration but is currently awaiting ratification.

3. *In your experience, in your jurisdiction, how long does it take generally to eliminate the double taxation under the European Arbitration Convention and / or mutual agreement procedures set forth by tax treaties (and / or the domestic procedure if it exists)?*

According to the provisions of the RD mentioned in paragraph 1 above, the estimated duration of the procedure could range between two or three years. However, it varies depending on the difficulty of the case.

4. *In your jurisdiction, what are the starting point and time limit to initiate a procedure to eliminate double taxation resulting from a transfer pricing reassessment?*

Generally, the starting point is the notification of the reassessment.

Deadline for initiating the procedure depends on the procedure:

— In the framework of DTT: the deadline depends on the concrete convention (e.g. in the DTT signed between Spain and France, time limit is three years);
— In the framework of the EAC: deadline is three years.

In Spain, when the Spanish tax authorities issue a reassessment, taxpayers usually discuss it with them.

MAP could also be understood as an alternative to the challenge of the reassessment by the way of an internal procedure (before the Spanish tax administration or even, in further steps, before the Spanish tax Courts). However, in our experience, taxpayers do not introduce "directly" a MAP. They usually would try to fight against the reassessment internally previously.

5. *If a reassessment is issued by your tax authorities, which State must receive the application for the international procedure to eliminate double taxation[1] (your State? the other State concerned? both States?)*

The competent authority is usually the Spanish General Directorate of Taxes, that is to say that the application would be received by Spain. The other State involved would take part in further steps of the process, but the application would be managed by Spain at least at the firsts stages.

6. *What are the formal conditions to initiate an international procedure to eliminate double taxation? Is there a list of documents to provide? To which department of the tax authorities (name, address) must the request be sent?*

The application should be submitted, by written, to the competent authority in Spain. In particular, this "competent authority", as commented previously, is the Spanish General Directorate of Taxes.

Additionally, there is a list of documents to provide. Mainly:

— Complete identification data of the person who is filing the application. Also, identification of the other parties involved in the transaction that is being analyzed;
— Identification of the tax administration involved in the other State;
— Identification of the article of the convention that, in the view of the taxpayer, has been applied incorrectly (this requirement is only applicable for the DTT procedure);
— Identification of the tax periods involved;
— Detailed description of the background and circumstances related to the case. It should be included here the amounts under discussion, and any other data related to the situation and transaction structures of the entities involved in the procedure;

[1] The terms "international procedure to eliminate double taxation" mean the European Arbitration Convention or a mutual agreement procedure set forth by a tax treaty.

— The taxpayer must indicate any claims submitted (before the tax administration or the Courts) in respect of the case analyzed, by the taxpayer or any other related party (related party in the sense of party involved in the procedure). Also, it should be reminded any resolution issued in relation to the question to be analyzed in the procedure, if any;
— The taxpayer must indicate if, in connection to the same question raised in the procedure (or a similar one), he has submitted a previous application before the competent authority;
— Declaration on whether the application submitted includes any issue that could be considered as part of an Agreed Prior Assessment Process[2] or similar procedure;
— Commitment of the taxpayer (who applies for the procedure) to answer in the most complete and quickest way to any request from the tax authorities, and additionally, to keep at the request of the latter all the documentation related to the case;
— Date and signature of the taxpayer applying for the procedure, or, if applicable, of its legal representative.

Moreover, it should be attached additional documentation to the application:

i. copy of the final audit report;
ii. any transfer pricing documentation required by the Corporate Income Tax regulations;
iii. copy of any resolution issued in connection to the procedure by the tax administration/authorities of the other State;
iv. and, if applicable, accreditation of the representation (in the event of taxpayers acting through legal representatives).

7. In which cases would the competent authority of your jurisdiction refuse to engage/participate to the international procedure to eliminate double taxation?

The competent authority in certain cases could deny the application. However, the denial has to be motivated.

Cases, where the application could be refused are, mainly the following (please note however that the competent authority can consider the denial in more situations than the ones included below):

a. *In respect of the DTT procedure:*

- If it does not exist a DTT which includes an article related to MAPs;
- When the application is submitted out of the timeline envisaged in the DTT or if it is submitted by a person who is not entitled;
- When the tax issue is not derived from a disagreement in the application of the DTT procedure (i.e. when it is derived from an inconsistency related to the domestic legislation);
- When it has been proved that the behavior of the taxpayer aimed at avoiding tax any of the States involved;
- When the application relates to the opening of a new procedure in respect of a tax issue that has already been discussed in other mutual agreement procedures;
- When the fulfillment of the requirements is met due in time, but those requirements were not completed (e.g. cases where a requirement of extra documentation has been issued but the submission of said documentation was not completed as required).

[2] Agreed Prior Assessment Process or Advance Pricing Agreement ("Acuerdo previo de valoración or APAs") is a domestic mechanism for ensuring legal certainty regarding transfer pricing between associated entities, through a prior determination of the fair market value of the consideration for the proposed transactions. It is mainly a procedure through which taxpayers negotiate APAs with the Spanish tax authorities in order to prevent disputes between the tax authorities and taxpayers in cases involving imposed adjustments to the value of transactions.

b. *In respect of the EAC:*

- When requirements settled in article 4 of the 90/436/ECC Convention are not met;
- When the application has not been submitted within the limits included in 90/436/ECC Convention i.e. when serious penalties were applied. In Spain, "serious penalties" are the ones characterized as significant and critical according to the Spanish General Tax Law, and the ones related to criminal offenses.

8. Is tax collection suspended during the procedure?

It can be suspended.

In this regard, certain conditions should be met:

— It is required to have previously submitted an application for one of the two MAPs foreseen in RD 1794/2008 (DTT or EAC);
— The suspension could not be obtained through the alternatives available according to the domestic legislation (i.e. in front of Tax Administrative or Jurisdictional Courts);
— Guarantees are required (i.e. total amount of the tax debt, plus any recharges applicable, should be covered by said guarantees, being usually constituted by financial endorsement)

Additionally, please note that according to the new measures recently introduced in the Spanish tax law, in certain procedures (e.g. recovery of sums unduly paid) the suspension of the procedure would not in principle require the provision of guarantees (i.e. automatic suspension).

9. Assuming the procedure results in an agreement on a way to cancel double taxation, how is generally such agreement implemented in your jurisdiction?

In principle, and according to the provisions of RD 1794/2008, the implementation of the MAP results has an impact on the financial year where the MAP is resolved and not in any prior year, regardless of whether it is an open tax year or not.

However, in our experience, the tax administration usually issues a new liquidation related to the transfer pricing adjustment and in connection to the tax period where said adjustment is referred to.

Additionally, if the procedure results in a decrease of tax, this reduction gives rise to the payment of interest to the local taxpayer.

The application of withholding tax in respect to transfer pricing reassessments is a controversial tax issue that, up to date, is still pending to be solved by the tax authorities. A case by case analysis is required to determine whether it applies (and therefore whether it can be cancelled in the framework of the MAP).

10. In your jurisdiction, is it possible to engage concomitantly an international procedure to eliminate double taxation and litigation in front of courts? If yes, is it necessary at some stage to abandon the litigation in order to conclude / finalize the international procedure?

To the best of our knowledge, this alternative is not possible.

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Switzerland

1. In your jurisdiction, what are the legal bases for eliminating double taxation further to a transfer pricing reassessment (European Arbitration Convention, mutual agreement procedures provided for by tax treaties)? In addition to the procedures set forth by such tax treaties, is there any other (formal or informal) domestic procedure in your jurisdiction?

As a third party state, Switzerland is not a party to the 90/436 EEC Convention of 23 July 1990 on the elimination of double taxation in connection with the adjustment on profits of associated enterprises (also referred to as the European Arbitration Convention). The legal bases for the procedures to eliminate double taxation further to a transfer pricing reassessment are set forth in the applicable Swiss Double Taxation Treaties (hereinafter **"DTTs"**).

In principle, the Swiss DTTs do not provide for any specific provisions concerning the applicable procedure for corresponding adjustments.

In practice, adjustments are made as follows:

— *In case of a not finally assessed tax year:*

A corresponding adjustment is possible unilaterally in the ordinary assessment procedure under the following conditions:

- The competent Swiss tax authority comes to the conclusion that it would have carried out a primary adjustment too if it were in the position of the foreign tax authority;
- The transfer pricing modalities were applied in good faith and not obviously wrong;
- Limitation period of assessment is not expired.

— *In case of a finally assessed tax year:*

A corresponding adjustment is possible on the basis of a mutual agreement according to the applicable DTT when Article 25 of the OECD Model Tax Convention **("OECD-MTC")** is included.

However, even without a mutual agreement procedure it is under exceptional circumstances possible that the Swiss tax authorities come to the conclusion that the double taxation has to be fully remedied unilaterally on the Swiss side even in case of a finally assessed tax year. In such cases, the implementation of the corresponding adjustment could only be carried out with the consent of the competent cantonal authorities due to procedural reasons.

2. In addition – as the case may be – to the European Arbitration Convention, did your jurisdiction sign tax treaties with other States including an arbitration procedure? If yes, can you give the list of such States?

As per July 2014 the following double tax treaties included an arbitration procedure:

- Article 25 paragraph 5 of the DTT with Australia;
- Article 25 paragraph 5 of the DTT with Austria;
- Article 25 paragraph 5 of the DTT with Belgium;
- Article 24 paragraph 6 of the DTT with Canada;
- Article 25 paragraph 5 of the DTT with Denmark (including Faroe-Island);
- Article 27 paragraph 5 of the DTT with France;
- Article 25 paragraph 5 ff. of the DTT with Germany;
- Article 24 paragraph 5 of the DTT with Great Britain
- Article 24 paragraph 5 of the DTT with Greece;
- Article 24 paragraph 5 of the DTT with Hong Kong;
- Article 25 paragraph 5 of the DTT with Iceland;
- Article 25 paragraph 5 of the DTT with Kazakhstan;
- Article 25 paragraph 5 of the DTT with Luxemburg;
- Article 25 paragraph 5 of the DTT with the Netherlands;
- Article 25 paragraph 5 of the DTT with Poland;
- Article 25 paragraph 5 of the DTT with Romania;
- Article 25 paragraph 5 of the DTT with Slovenia;
- Article 24 paragraph 5 of the DTT with South Africa
- Article 25 paragraph 5 of the DTT with Spain
- Article 25 paragraph 6 ff. of the DTT with the US.

According to an oral information by the competent Swiss tax authorities, Switzerland has not yet been involved in any arbitration procedure.

3. In your experience, in your jurisdiction, how long does it take generally to eliminate the double taxation under the European Arbitration Convention and/or mutual agreement procedures set forth by tax treaties (and/or the domestic procedure if it exists)?

It is not possible to predict the duration of a mutual agreement procedure. It is recommended to plan a duration of several years in this context.

4. In your jurisdiction, what are the starting point and time limit to initiate a procedure to eliminate double taxation resulting from a transfer pricing reassessment?

In a first step, the competent tax authorities issue an assessment decision or an assessment proposal subject to further discussions. Thereafter, the transfer pricing reassessment has to be challenged in an appeal procedure. Only then, it is possible to apply for the initiation of a mutual agreement procedure.

If the transfer pricing reassessment results from a foreign tax assessment and the relevant tax year has already been finally assessed in Switzerland at that time, it is recommended to immediately initiate the mutual agreement procedure (or revision procedure under internal Swiss law, see above).

It has to be emphasized that the deadlines set forth in the Swiss DTT may differ from the three-year period of limitation provided for by Article 25 section 1 of the OECD-MTC.

5. If a reassessment is issued by your tax authorities, which State must receive the application for the international procedure to eliminate double taxation[1] (your State? the other State concerned? both States?)

From a Swiss point of view, the procedure should normally be initiated in the residence state of the parent company, at least in a parent-subsidiary context. In case of profit adjustments in the framework of flows between sister companies, the procedure can be initiated in the residence state of the sister companies concerned.

6. What are the formal conditions to initiate an international procedure to eliminate double taxation? Is there a list of documents to provide? To which department of the tax authorities (name, address) must the request be sent?

There are no specific administrative guidelines in Switzerland providing for a list of documents to be filed. The general rules according to OECD-MTC apply.

The competent Swiss authority is the State Secretariat for international Financial Matters (hereinafter "SIF"), Bundesgasse 3, 3003 Bern. In case of practical or procedural issues the SIF very often takes into consideration the OECD manual on effective mutual agreement procedures (also referred to as "MEMAP").

7. In which cases would the competent authority of your jurisdiction refuse to engage / participate to the international procedure to eliminate double taxation?

In the following cases the SIF might refuse to initiate a mutual agreement procedure:

- If an unilateral reassessment is still possible (e.g. unilateral adjustment of not finally assessed tax years [see question 1]; remission of the taxes in Switzerland because it seems impossible to reach a successful implementation of a mutual agreement procedure with the other contracting state);
- In cases the taxpayer did apparently not act in good faith (contradictory behaviour);
- If it was not possible in similar cases for the SIF to reach mutual agreements.

8. Is tax collection suspended during the procedure?

The tax collection is basically not suspended in case of an ongoing mutual agreement procedure.

9. Assuming the procedure results in an agreement on a way to cancel double taxation, how is generally such agreement implemented in your jurisdiction?

The implementation of the agreement does not occur automatically. The taxpayer has to apply for a revision vis-à-vis the competent cantonal Swiss tax authorities.

A possible refund of taxes generally includes a credit of late interest. The refund procedure may vary from canton to canton.

If the correlative adjustment and its tax consequences in Switzerland are explicitly addressed in a mutual agreement, the correlative adjustment is exempt from Swiss withholding taxes. If the mutual agreement does not address the Swiss tax treatment of the secondary adjustment it is still possible that the respective transactions trigger Swiss withholding taxes.

[1] The terms "international procedure to eliminate double taxation" mean the European Arbitration Convention or a mutual agreement procedure set forth by a tax treaty.

10. In your jurisdiction, is it possible to engage concomitantly an international procedure to eliminate double taxation and litigation in front of courts? If yes, is it necessary at some stage to abandon the litigation in order to conclude / finalize the international procedure?

It is possible to engage in parallel an international procedure to eliminate a double taxation and an appeal against a tax assessment in front of a Swiss court.

A mutual agreement requires the unconditional consent of a tax payer. Therefore and in order to avoid any conflicting court decisions, the competent authorities require from the tax payer to abandon any pending tax litigation before giving the formal consent to the mutual agreement.

In certain cases, the competent authorities allow the tax payer to wait with the consent to the mutual agreement procedure until the internal tax court procedure is terminated.

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United Kingdom

1. In your jurisdiction, what are the legal bases for eliminating double taxation further to a transfer pricing reassessment (European Arbitration Convention, mutual agreement procedures provided for by tax treaties)? In addition to the procedures set forth by such tax treaties, is there any other (formal or informal) domestic procedure in your jurisdiction?

As the UK is a member of the OECD, UK taxpayers may invoke Mutual Agreement Procedures (hereinafter "MAP") described under Article 25 of the OECD Model Tax Convention (hereinafter "OECD-MTC"). The terms of the OECD-MTC are generally adopted under the relevant tax treaty where the other signatory is agreeable. The European Union (hereinafter "EU") 'Convention on the elimination of double taxation in connection with the adjustment of profits of associated enterprises' 90/463/EEC (hereinafter the "European Arbitration Convention") may provide an alternative to the MAP procedure under the UK's tax treaties where residents of EU Member States are potentially subject to double taxation. MAP may be invoked under the UK's tax treaties, under the European Arbitration Convention, or under both simultaneously.

On considering a MAP case, the UK Competent Authority may conclude that the taxation of relevant transactions proposed or applied by a tax treaty partner is in accordance with the tax treaty and may grant relief on a unilateral basis at this point, even if the treaty partner is unwilling or unable to enter MAP.

2. In addition – as the case may be – to the European Arbitration Convention, did your jurisdiction sign tax treaties with other States including an arbitration procedure? If yes, can you give the list of such States?

The UK has tax treaties with over 100 countries, about thirteen of which now contain a provision for arbitration. HMRC is generally prepared to consider requests for reference of a case to arbitration unless the relevant tax treaty prevents it.

3. In your experience, in your jurisdiction, how long does it take generally to eliminate the double taxation under the European Arbitration Convention and/or mutual agreement procedures set forth by tax treaties (and/or the domestic procedure if it exists)?

Statistics released by Her Majesty's Revenue and Customs (hereinafter "HMRC") covering the period 2009–2014 indicate that the average time to resolve MAP cases is 20–29 months, with 50% of cases resolved within approximately 20 months.

4. In your jurisdiction, what are the starting point and time limit to initiate a procedure to eliminate double taxation resulting from a transfer pricing reassessment?

MAP cases must be presented before the expiration of:

— The period of six years following the end of the tax year to which the case relates; or
— Such longer period as may be specified in the tax treaty for claims after 27 July 2000

The starting point for the time limit depends on the specific terms of the particular UK tax treaty under which the MAP is invoked. For older treaties the time period is not addressed, so that the domestic limit of six years following the end of the tax year to which the case relates applies. In each case the relevant tax treaty should be consulted.

Taxpayers are generally invited to follow the normal transfer pricing enquiry process before invoking MAP, and to informally discuss double taxation issues prior to the MAP process being formally initiated. Therefore, in practice, MAP does not provide a parallel avenue to the domestic appeals process. It should be noted that the UK taxpayer is not a formal party to the MAP consultation process, but is invited to participate informally at the discretion of HMRC.

5. If a reassessment is issued by your tax authorities, which State must receive the application for the international procedure to eliminate double taxation[1] (your State? the other State concerned? both States?)

The European Arbitration Convention requires that at the same time an enterprise presents a case to the Competent Authority of the state of which it is resident or in which it has a permanent establishment, it must at the same time notify the Competent Authority of any other states which may be concerned in the case. As a matter of good practice HMRC advises that a presentation of a case should also be copied to the Competent Authority of the other state in a MAP case, even if it is outside the European Arbitration Convention.

6. What are the formal conditions to initiate an international procedure to eliminate double taxation? Is there a list of documents to provide? To which department of the tax authorities (name, address) must the request be sent?

In the UK domestic legislation, there is no set form of presentation of a MAP case.

For cases initiated in the framework of the European Arbitration Convention, taxpayers should follow the guidelines provided by this treaty. Furthermore, specific treaties may state that certain information must be provided before it is accepted that a case has been presented for the purposes of starting the period after which arbitration may be invoked. It is therefore advisable to consult the relevant treaty and public guidance on the matter provided by the UK's treaty partner when presenting a case to that partner.

UK taxpayers may present their cases in writing to the HMRC parties listed in State of Practice 1 (2011) and International Manual INTM153270. A presentation should specify the year(s) concerned, the nature of the action giving rise, or expected to give rise, to taxation not in accordance with the convention, and the full names and addresses of the parties to which the MAP relates, including the UK enterprise's HMRC office and reference number.

[1] The terms "international procedure to eliminate double taxation" mean the European Arbitration Convention or a mutual agreement procedure set forth by a tax treaty.

7. In which cases would the competent authority of your jurisdiction refuse to engage / participate to the international procedure to eliminate double taxation?

HMRC follows the European Arbitration Convention. Article 8 of the Arbitration Convention provides that the competent authority of a Contracting State is not obliged to initiate either of the two stages, MAP or advisory commission, where one of the enterprises involved is liable to a serious penalty. The UK has declared that it will interpret the term 'serious penalty' as comprising criminal sanctions and administrative sanctions in respect of the deliberate or careless delivery of incorrect accounts, claims or returns for tax purposes.

HMRC will, in practice, only exercise its discretion under Article 8 in cases involving the imposition of penalties for deliberate inaccuracy. In considering whether to proceed under the Arbitration Convention the UK will take into account the facts and circumstances which have led to the taxpayer becoming liable to such a sanction.

There is no provision equivalent to Article 8 of the Arbitration Convention affecting MAP or arbitration in the OECD Model on which the UK seeks to base its tax treaties.

8. Is tax collection suspended during the procedure?

Tax collection is not suspended during the MAP procedure.

9. Assuming the procedure results in an agreement on a way to cancel double taxation, how is generally such agreement implemented in your jurisdiction?

The manner in which relief is granted by the UK depends on the facts and circumstances of the particular case. Relief may be granted either by deduction against UK profits or by tax credit. Following agreement between the Competent Authorities, the UK taxpayer will usually be invited to submit revised computations reflecting the agreed relief.

The UK does not accept that it is permissible for a taxpayer to make, unilaterally, an adjustment through its accounts and tax return to obtain corresponding relief for an adjustment which reduces its UK tax liability either when self-assessing or in response to an adjustment imposed by another jurisdiction. The only avenue to relief is presentation of a case involving MAP.

10. In your jurisdiction, is it possible to engage concomitantly an international procedure to eliminate double taxation and litigation in front of courts? If yes, is it necessary at some stage to abandon the litigation in order to conclude / finalize the international procedure?

The UK follows the approach described in the Commentary on Article 25 at Paragraph 76, where a person cannot simultaneously pursue a MAP and domestic legal remedies. Thus a case may be presented and accepted for MAP while the domestic remedies are still available. In such cases the UK Competent Authority will generally require that the taxpayer agrees to the suspension of these legal remedies or, if the taxpayer does not agree, will delay the MAP until these domestic remedies are exhausted. Where the adjustment giving rise to MAP has been made in the other state, the UK Competent Authority does recognise that whilst a taxpayer may be willing to suspend domestic legal remedies, the other fiscal authority may be unwilling to do so. Similarly, the UK Competent Authority may recognise that pursuit of domestic legal remedies in another state may take a considerable amount of time, and in such cases the UK Competent Authority may be willing to continue the MAP while the domestic legal process continues.

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United States

1. In your jurisdiction, what are the legal bases for eliminating double taxation further to a transfer pricing reassessment (European Arbitration Convention, mutual agreement procedures provided for by tax treaties)? In addition to the procedures set forth by such tax treaties, is there any other (formal or informal) domestic procedure in your jurisdiction?

In the United States, if there is a transfer pricing reassessment (a proposed adjustment), there are three ways to eliminate the potential double taxation. A taxpayer may begin a judicial proceeding, present an action for administrative review with the Office of Appeals of the Internal Revenue Service (hereinafter "IRS"), or initiate a mutual agreement procedure with the Advance Pricing and Mutual Agreement (hereinafter "APMA") Program of the IRS pursuant to the relevant double tax treaty. APMA acts as the U.S. competent authority in the context of transfer pricing matters. If the taxpayer chooses, it may combine an action for administrative review with an initiation of the mutual agreement procedure.

For competent authority requests filed on or after October 30, 2015, the domestic procedures governing the mutual agreement procedure process are contained in Revenue Procedure 2015-40. This document provides procedures for filing competent authority requests, describes the required content of such requests, provides procedures for coordinating the mutual agreement process with U.S. domestic law processes, and provides information regarding the processing of competent authority requests.

The U.S. competent authority may eliminate double taxation unilaterally by withdrawing the reassessment. In our experience, however, the U.S. competent authority will engage in discussions with the other relevant competent authority before taking such an action.

2. In addition – as the case may be – to the European Arbitration Convention, did your jurisdiction sign tax treaties with other States including an arbitration procedure? If yes, can you give the list of such States?

The United States has four tax treaties in force with a mandatory binding arbitration procedure. These treaties are with Belgium, Canada, France, and Germany.

Three U.S. treaties or protocols to U.S. treaties that would introduce mandatory binding arbitration currently are awaiting ratification. These treaties are with Japan, Switzerland, and Spain.

Finally, there are six treaties in force that contain procedures for voluntary arbitration: Switzerland, Ireland, Kazakhstan, Mexico, the Netherlands, and Italy. In general, these procedures have not been used. As a result, the United States has committed to negotiating mandatory binding arbitration provisions with willing treaty partners.

3. In your experience, in your jurisdiction, how long does it take generally to eliminate the double taxation under the European Arbitration Convention and / or mutual agreement procedures set forth by tax treaties (and / or the domestic procedure if it exists)?

On average, it takes approximately two years for the IRS to reach a mutual agreement with its counterparty. The IRS publishes processing times annually. The average processing time for mutual agreement cases resolved in 2014 in the transfer pricing context was 21.4 months. The 2014 average processing times were shorter than had been the case in prior years; from 2011 – 2013, the average processing times ranged from 26 to 28 months.

In general, mutual agreement cases initiated as a result of an IRS adjustment take less time to resolve than those initiated as a result of a foreign adjustment. For U.S.-initiated adjustments, the average processing time for cases resolved in 2014 was 15.0 months, and, for foreign-initiated adjustments, the average time was 25.3 months.

4. In your jurisdiction, what are the starting point and time limit to initiate a procedure to eliminate double taxation resulting from a transfer pricing reassessment?

The IRS will not accept a competent authority request with respect to an issue that arises from an examination by the IRS before the IRS has communicated the amount of the proposed adjustment in writing to the taxpayer. This is typically done in a Notice of Proposed Adjustment. With respect to foreign-initiated adjustments, the IRS typically will not consider a competent authority request until the foreign tax authority has provided the taxpayer with a written communication providing the amount of the potential adjustment and an explanation for such adjustment.

Most U.S. tax treaties provide that a mutual agreement may be implemented notwithstanding the expiration of time limits (e.g., statutes of limitation) or other procedural limitations under U.S. law or by any similar law in the treaty country. However, the IRS prefers that taxpayers take protective measures to ensure that statutes of limitation are kept open in each jurisdiction to maximize the flexibility of each jurisdiction in eliminating double taxation.

Many U.S. tax treaties provide for specific notice or other procedural requirements. If these requirements are applicable and are not met, then the IRS or the foreign tax authorities may decline to accept a competent authority request, or may decline to provide a corresponding adjustment.

As a result, a taxpayer facing the potential of double taxation in a matter involving the United States must consult the relevant treaty to determine whether there are notice or other procedural requirements that must be met, and the extent to which it would be advisable to keep open relevant local law statutes of limitation.

In our experience, it is advisable to initiate the competent authority procedure as soon as written notification is received by the taxpayer. For an issue that arises from an examination by the IRS, the U.S. competent authority will not accept a request before the IRS has communicated the amount of the proposed adjustment in writing to the taxpayer, typically in a Notice of Proposed Adjustment. With respect to foreign-initiated adjustments, the IRS typically will not consider a competent authority request until the foreign tax authority has provided the taxpayer with a written communication providing the amount of the potential adjustment and an explanation for such adjustment. Taxpayers are otherwise encouraged to file a competent authority request promptly after receiving notice that a competent authority issue is likely to arise.

The IRS welcomes informal pre-filing meetings with taxpayers to discuss matters that may lead to competent authority requests. Pre-filing conferences are required for certain cases, such as cases involving aggregate foreign-initiated adjustments of over USD 50m.

5. *If a reassessment is issued by your tax authorities, which State must receive the application for the international procedure to eliminate double taxation[1] (your State? the other State concerned? both States?)*

U.S. tax treaties sometimes specify the State (or States) with which a taxpayer must initiate a mutual agreement procedure, but often provide that a taxpayer may initiate a mutual agreement procedure with either State. In practice, taxpayers typically file requests with both States.

6. *What are the formal conditions to initiate an international procedure to eliminate double taxation? Is there a list of documents to provide? To which department of the tax authorities (name, address) must the request be sent?*

The formal conditions for initiating a mutual agreement procedure are contained in Revenue Procedure 2015-40. An Appendix to that Revenue Procedure provides a list of documents which must be included in a request. The IRS may reject a request that does not comply with these requirements. The content of a request may be discussed with the IRS in a pre-filing conference.

In general, a competent authority request includes information about the taxpayers at issue, the adjustments proposed, and relevant factual, legal, or procedural context for the matter. U.S.-specific authorizations, disclosures, consents, and notifications are also required.

The U.S. competent authority conducts the competent authority process through two offices, APMA and the Treaty Assistance and Interpretation Team. APMA has primary responsibility for cases arising out of transfer pricing reassessments.

For cases over which APMA has jurisdiction, a competent authority request must be sent to the following address:

Deputy Commissioner (International)
Large Business and International Division
Internal Revenue Service
1111 Constitution Avenue, N.W.
Washington, D.C. 20224
SE:LB:IN:ADCI:TPO:APMA:M3-370
(Attention: APMA)

[1] The terms "international procedure to eliminate double taxation" mean the European Arbitration Convention or a mutual agreement procedure set forth by a tax treaty.

7. In which cases would the competent authority of your jurisdiction refuse to engage/participate to the international procedure to eliminate double taxation?

There are a number of different cases in which the U.S. competent authority may refuse to engage or participate in a procedure to eliminate double taxation. The U.S. competent authority typically will notify and, as appropriate, consult with the relevant foreign competent authority before taking this type of action.

The circumstances under which the U.S. competent authority may decline to accept a request or cease providing assistance include, but are not limited to, the following:

- The taxpayer does not comply with the procedural requirements set forth in Revenue Procedure 2015-40 (although the taxpayer will be given a reasonable opportunity to correct or remedy any deficiencies in its request or in its other submissions before this step is taken).
- According to a plain reading of the U.S. tax treaty, the taxpayer is not eligible for the treaty benefit or for the assistance requested (for example, if the taxpayer is not a resident of either contracting state).
- The taxpayer's conduct before or after filing its competent authority request has undermined or been prejudicial to the competent authority process. This type of behavior includes but is not limited to conduct that has significantly impeded the ability of IRS Examination, the U.S. competent authority, or any other part of the IRS, or the foreign tax authority, to adequately examine the competent authority issues for which assistance has been requested. This type of behavior also includes conduct that has significantly impeded the ability of the U.S. or foreign competent authority to undertake substantive consideration of and resolve the competent authority case.

Examples of conduct that undermines or prejudices the competent authority process include instances where:

- The taxpayer has agreed to or acquiesced in a foreign-initiated adjustment or entered into a unilateral APA with foreign tax authorities, and the manner in which the taxpayer agreed to that adjustment or entered into that unilateral APA impeded the U.S. competent authority from engaging in full and fair consultations on the issues.
- The taxpayer entered into a unilateral APA with the IRS when the competent authority issue could reasonably and practically have been covered by pursuing a bilateral APA instead.
- The taxpayer rejected a request to extend the period of limitations for assessment of tax for taxable periods covered by the competent authority request.
- During the competent authority process, the taxpayer presents new material information or evidence that reasonably could have been presented to IRS Examination during the examination of the taxable years covered by the competent authority request.

The U.S. competent authority will accept cases involving an adjustment that has been initiated by the taxpayer. A pre-filing conference is required in such cases. In addition, the IRS may reject a request for assistance if the taxpayer has not made a timely request or otherwise has pursued competent authority assistance in a way that has undermined or prejudiced the competent authority process. This includes situations where the taxpayer has impeded the U.S. or foreign competent authority from engaging in full and fair consultations on the competent authority issue(s) involved.

Under U.S. law, the IRS may assert penalties when proposing a transfer pricing adjustment. The most typical penalties in such a case are for inadequate contemporaneous documentation and are determined as a percentage of the amount of the adjustment. The U.S. competent authority may consult with its foreign counterpart with respect to ancillary issues such as penalties. In addition, any reduction in the amount of the adjustment as a result of a mutual agreement may have the effect of reducing penalties. Although the assertion of penalties does not automatically bar taxpayers from accessing the mutual agreement process, it is possible that the perceived behavior which led to the assertion of a penalty could also constitute conduct that undermines or prejudices the competent authority process. In such a case, as described above, such conduct could prevent access to the mutual agreement process.

8. Is tax collection suspended during the procedure?

Under Revenue Procedure 2015-40, tax collection is suspended during the mutual agreement process. Pursuant to that revenue procedure, when a taxpayer invokes the competent authority process, the U.S. competent authority will assume exclusive jurisdiction within the IRS over all competent authority issues in that request. Any further administrative action by the IRS, such as assessment and collection procedures, with respect to those issues will be suspended unless the U.S. competent authority instructs otherwise. Standard administrative procedures will apply to issues over which the U.S. competent authority has not assumed jurisdiction.

9. Assuming the procedure results in an agreement on a way to cancel double taxation, how is generally such agreement implemented in your jurisdiction?

Once the U.S. and foreign competent authorities reach a tentative competent authority resolution, that resolution will be presented to the taxpayer for consideration. If the taxpayer accepts the resolution, the U.S. competent authority will direct the relevant offices within the IRS to begin implementing its terms, including with respect to collateral or ancillary adjustments. To the extent authorized under the applicable U.S. tax treaty, the competent authority resolution will be implemented notwithstanding any time limits or other procedural limitations of U.S. law.

The timing of each correlative adjustment will depend on the terms of the competent authority resolution. In our experience, the U.S. competent authority typically implements correlative adjustments over the financial years reassessed in the other State. The IRS has been open to other approaches to the extent the taxpayer can demonstrate that the approaches do not harm the interests of the IRS and are in the interest of sound tax administration.

Unless otherwise agreed, adjustments implemented by the IRS as a result of a mutual agreement are treated in the same manner as adjustments made pursuant to U.S. domestic law. Thus, to the extent interest would be owed to a taxpayer as a result of a refund of tax under U.S. domestic law, such interest would be owed to the taxpayer as a result of a refund of tax pursuant to a mutual agreement, assuming the taxpayer has made a protective claim of refund under U.S. procedures. The competent authorities may come to an agreement with respect to interest and other ancillary issues.

Under U.S. law, a secondary adjustment would generally be treated as a distribution or a capital contribution, as appropriate. A distribution may be treated as a dividend and may be subject to withholding tax. Revenue Procedure 99-32 provides taxpayers with the ability to establish an interest bearing account receivable to avoid the consequences of the secondary adjustment that would otherwise result. In such a case, if the receivable is paid within 90 days of the amended return that reflects the primary adjustment, then the taxpayers will be considered to have advanced and repaid the requisite amounts without the withholding tax and other consequences that could attach to a distribution. Although Revenue Procedure 99-32 requires the payment of interest on the advance, the U.S. competent authority is empowered to waive interest in appropriate circumstances.

10. In your jurisdiction, is it possible to engage concomitantly an international procedure to eliminate double taxation and litigation in front of courts? If yes, is it necessary at some stage to abandon the litigation in order to conclude/finalize the international procedure?

In the United States, it is generally not possible to engage concomitantly in the mutual agreement process and litigation. Under Revenue Procedure 2015-40, the U.S. competent authority will not accept or continue to consider a competent authority request regarding an issue and taxable period that has been designated by the IRS for litigation. Nor will the U.S. competent authority generally accept or continue to consider an issue and taxable period that is pending in a U.S. federal court.

During the competent authority process, a taxpayer may be asked to join the IRS in a motion to sever any competent authority issues, delay trial, or stay proceedings pending the outcome of the taxpayer's competent authority case. The final decision on severing issues, delaying trial, or staying proceedings rests with the relevant court. Nevertheless, if the court denies a motion to sever competent authority issues, delay trial, or stay proceedings, the U.S. competent authority will terminate any ongoing consideration of the competent authority request.

11. Any other interesting aspect not addressed above?

Not applicable.

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