



# APA & MAP Country Guide 2019 – Belgium

CONNECTING THE DOTS OF INTERNATIONAL TAX CONTROVERSY



# Belgium

## APA Program

### KEY FEATURES

<b>Competent authority</b>	<p>Office for Advance Decisions in Tax Matters (Ruling Commission) for unilateral APAs; and</p> <p>General Administration of Taxation of the Department of International Affairs for bilateral and multilateral APAs (GATDIF).</p>
<b>Relevant provisions</b>	<p>Articles 20-28 of the Law of December 24, 2002 for unilateral APAs; and an information brochure available on the Belgian Federal Public Service Finance website for bilateral and multilateral APAs.</p>
<b>Types of APAs available</b>	<p>Unilateral, bilateral, and multilateral APAs are available.</p>
<b>Acceptance criteria</b>	<p>No specific guidance.</p>
<b>Key timing requests, deadlines</b>	<p>Applications for unilateral APAs cannot relate to situations or transactions that have already produced effects from a tax perspective. Bilateral and multilateral applications must in principle be filed prior to the intended transactions. For practical reasons, GATDIF may allow for bilateral and multilateral APAs to enter into force on the first day of the financial year even if some transactions have already taken place.</p>
<b>APA term limits</b>	<p>There is a five-year maximum term for an APA.</p>
<b>Filing fee</b>	<p>There is no filing fee.</p>

<b>Rollback availability</b>	Rollbacks are not available for unilateral APAs. Rollback is available for bilateral and multilateral APAs when the relevant facts and circumstances of prior years are identical to those in the proposed APA and filing deadlines have not expired when the bilateral or multilateral APA is concluded with the relevant foreign tax authority. The foreign tax authority must also approve of the rollback.
<b>Collateral issues</b>	<p>A unilateral APA application will be rejected if:</p> <ul style="list-style-type: none"> <li>• the application relates to an appeal or to legal proceedings between the Belgian state and the Taxpayer;</li> <li>• the application deals with recovery and prosecution;</li> <li>• the application relates to tax rates and increases, procedures, and prescriptions;</li> <li>• essential elements of the transaction described are linked to a tax haven that does not cooperate with the OECD; or</li> <li>• the transaction described has no economic substance in Belgium.</li> </ul>

## PRE-FILING REQUIREMENTS

<b>Overview</b>	<p>Pre-filing applications should include:</p> <ul style="list-style-type: none"> <li>• a brief description of the transaction to be covered;</li> <li>• the relevant tax provisions as they relate to the transaction; and</li> <li>• any previous rulings and guidelines issued by the tax authorities.</li> </ul>
<b>Anonymous pre-filing availability</b>	Anonymous pre-filing is available.

**APPLICATION REQUIREMENTS**

<p><b>Content of application</b></p>	<p>Applications for unilateral APAs must be submitted to the Ruling Commission and include:</p> <ul style="list-style-type: none"> <li>• the identity of the Taxpayer and of all other parties concerned by the request;</li> <li>• a description of the business activities of the Taxpayer;</li> <li>• a full description of the particular situation or transaction; and</li> <li>• reference to the statutory or regulatory provisions that will constitute the basis of the decision.</li> </ul> <p>Applications for bilateral and multilateral APAs must be submitted to the GATDIF and include:</p> <ul style="list-style-type: none"> <li>• the identity and description of the relevant parties;</li> <li>• period of time to be covered by the proposed APA;</li> <li>• description of intercompany transactions;</li> <li>• TP method;</li> <li>• comparative studies;</li> <li>• functional analysis;</li> <li>• any unilateral rulings that the group has concluded;</li> <li>• financial data of the company concerned; and</li> <li>• a power of attorney declaration accompanying applications filed by agents on behalf of the Taxpayer.</li> </ul>
<p><b>Language</b></p>	<p>Applications for a unilateral APA should be submitted in Dutch or French. Applications for a bilateral or multilateral APA should be submitted in Dutch, French or German. Supporting documentation may be submitted in Dutch, French, German or English.</p>
<p><b>SME provisions</b></p>	<p>No specific guidance.</p>

## OTHER PROCEDURAL CONSIDERATIONS

<b>General</b>	There are no unique procedural issues.
<b>Monitoring &amp; compliance</b>	The Ruling Commission in its decision may require Taxpayers to provide evidence of the correct application of unilateral APAs through documentation submitted with its annual tax return.
<b>Renewal procedure</b>	No specific guidance.

## MAP Program

### KEY FEATURES

<b>Competent authority</b>	General Administration of Taxation of the Department of International Affairs for bilateral and multilateral APAs (GATDIF).
<b>Relevant provisions</b>	Circular letter (2018/C/27 d.d. March 7, 2018) issued by GATDIF.
<b>Acceptance criteria</b>	Taxpayers may request a MAP if taxation has or is likely to occur that is not in accordance with the provisions of a DTT to which Belgium is signatory.
<b>Key timing requests, deadlines</b>	Most of Belgium's DTTs permit a Taxpayer to present their case to GATDIF within three years from the first notification to the Taxpayer of the actions giving rise to taxation not in accordance with the DTT. However, time limits may vary, and the relevant DTT should be consulted for the applicable time limit (for instance, the DTT with France prescribes a period of six months in which a case may be presented). Taxpayers have three years to present a case to GATDIF under the EU Arbitration Convention (90/436/EEC).

### APPLICATION REQUIREMENTS

<b>Content of application</b>	While no specific form is required, the MAP application must be filed in writing, supported by reasons and documentation enabling the tax authorities to decide whether or not its application is justified.
<b>Language</b>	The MAP request should be submitted in Dutch, French or German. An English translation of the request should be submitted if the common working language is not Dutch, French or German. Supporting documentation may be submitted in Dutch, French, German or English.

## OTHER PROCEDURAL CONSIDERATIONS

<b>Interaction with domestic proceedings</b>	Taxpayers may pursue domestic remedies in parallel with a MAP request.
<b>Arbitration</b>	<p>As Belgium is a member of the EU, Taxpayers may initiate the arbitration procedure under the Tax Dispute Resolution Mechanism Directive on October 10, 2017. The Directive is applicable to matters submitted after July 1, 2019, on issues related to the tax year starting on or after January 1, 2018.</p> <p>The EU Arbitration Convention also imposes a binding obligation on EU member states to eliminate double taxation under DTTs including, if necessary, by reference to the opinion of an independent advisory body.</p>

## STATISTICS

<b>APA</b>	568 (EU situations) and 243 (non-EU situations) APAs were granted in 2017. Unilateral APAs are usually issued within three months. The average completion time for bilateral and multilateral APAs was 30 months (EU situations and non-EU situations).
<b>MAP</b>	Belgium had a total of 738 active MAP applications as of 31 December 2017. The average time needed to close MAP cases is 38 months for transfer pricing cases, and 44 months for other cases.

## Double Taxation Treaty Network

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

Albania	Congo	Hungary
Algeria	Croatia	Iceland
Argentina	Cyprus	India
Armenia <sup>(ii)</sup>	Czech Republic	Indonesia
Australia	Denmark	Ireland
Austria	Ecuador	Israel
Azerbaijan <sup>(ii)</sup>	Egypt	Italy
Bahrain	Estonia	Ivory Coast
Bangladesh	Finland	Japan
Belarus	France	Kazakhstan
Bosnia and Herzegovina	Gabon	Korea (Republic of)
Brazil	Georgia <sup>(ii)</sup>	Kosovo
Bulgaria	Germany	Kuwait
Canada	Ghana	Kyrgyzstan <sup>(ii)</sup>
Chile	Greece	Latvia
China <sup>(iv)</sup>	Hong Kong	Lithuania



Luxembourg	Poland <sup>(I)</sup>	Switzerland <sup>(I)</sup>
Macedonia	Portugal	Taipei <sup>(III)</sup>
Malaysia	Romania	Tajikistan <sup>(II)</sup>
Malta	Russia	Thailand
Mauritius	Rwanda	Tunisia
Mexico <sup>(I)</sup>	San Marino	Turkey
Moldova <sup>(II)</sup>	Senegal	Turkmenistan <sup>(II)</sup>
Mongolia	Serbia	Ukraine
Montenegro	Seychelles <sup>(IV)</sup>	United Arab Emirates
Morocco	Singapore	United Kingdom <sup>(I)</sup>
Netherlands	Slovak Republic	United States <sup>(I)</sup>
New Zealand	Slovenia	Uruguay <sup>(I)</sup>
Nigeria	South Africa	Uzbekistan
Norway	Spain	Venezuela
Pakistan	Sri Lanka	Vietnam
Philippines	Sweden	

## NOTES

- I denotes treaties with MAP arbitration provisions.
- II denotes treaties with the USSR that remain applicable until a separate tax treaty is concluded.
- III denotes treaties between the countries' representative office in Taipei and the Taipei Economic and Cultural Office in the relevant country.
- IV denotes treaties that became effective within the last five years.
- V denotes treaties that are awaiting ratification.
- VI denotes MAP provisions identical to para 3, art 25 of the OECD Model Convention with respect to Taxes on Income and on Capital.
- VII arbitration is to be conducted under the statutes of the ECJ.
- VIII arbitration is to be conducted under the statutes of the ICJ.

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