

## Updated Decree on Mutual Agreement Procedures

On June 22, 2020, the Deputy Minister of Finance [updated](#) the Decree on Mutual Agreement Procedures (*Besluit Onderlinge overlegprocedures*). The Decree entered into force on June 23, 2020 and has retroactive effect to June 11, 2020. The old Decree from 2008 has thus been canceled. The Decree provides, from a Dutch perspective, a detailed explanation and interpretation of the implementation of mutual agreement procedures (MAP's) as regulated in the Tax Dispute Resolution Mechanisms Act (*Wet fiscale arbitrage*; WFA), the bilateral tax treaties and the EU Arbitration Convention. The most important changes compared to the previous decree are:

- The procedure for mutual agreement procedures under the new Tax Dispute Resolution Mechanisms Act has been included.
- The distinction between the regular, early and extra early mutual agreement procedure ceases to apply.
- It contains a concession policy for the situation in which no outcome can be reached in the mutual agreement procedure due to the overlap with international court judgments.
- It contains a concession policy under which conditions the inspector may make a corresponding adjustment after the expiry of the deadline.
- A description is included of how the Dutch competent authority deals with agreement procedures in triangular relationship situations.
- It contains policy on the terms and conditions when applying for a Bilateral Advance Pricing Agreement (BAPA) or a Multilateral Advance Pricing Agreement (MAPA), which are the same as the terms and conditions when applying for a unilateral Advance Pricing Agreement (APA).
- Policy is included on interest on tax due and late payment interest in mutual agreement procedures, which has been brought into line with practice.

### Meijburg & Co comments

In conclusion, this Decree provides a welcome explanation and clarification of the existing legislation and regulations regarding mutual agreement procedures. Dutch taxpayers now have a better idea of the legal remedies available to prevent double taxation. An important acknowledgment in this Decree is the explicit reference to a judgment of the Amsterdam District Court dating from 2017, in which the Dutch tax authorities' initial refusal to admit the taxpayer in a MAP procedure was characterized as a decision. Such a refusal is consequently admissible for objection and appeal before the administrative court. Therefore, according to the Deputy Minister, legal action can be taken outside the Tax Dispute Resolution Mechanisms Act.

This Decree reflects the Dutch interpretation of mutual agreement procedures, which may be interpreted differently by another country.

Meijburg & Co  
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