

- (3) In this Note, the term “concerned person” means the presenter of a case to a competent authority for consideration under paragraph 1 of Article 23 (Mutual Agreement Procedure) of the Convention as well as any person whose tax liability to either Contracting State may be directly affected by a mutual agreement arising from that consideration.
- (4) The “commencement date” for a case is the date on which the information necessary to undertake substantive consideration for a mutual agreement is received by the competent authorities of both Contracting States.
- (5) The competent authority of each Contracting State shall confirm in writing to the other competent authority and to the presenter of the case the date on which all of the information necessary to undertake substantive consideration for a mutual agreement is received. However, this information will not be considered received until both competent authorities receive all materials submitted to the competent authority of either Contracting State by the concerned person(s) in connection with the mutual agreement procedure.
- (6) Notwithstanding paragraph 6 of Article 23 (Mutual Agreement Procedure) of the Convention a case may not be submitted to arbitration if:
  - (a) any tax return of any concerned person is not duly filed with at least one of the Contracting States with respect to a taxation year at issue in the case;
  - (b) a concerned person does not consent to the requirement in paragraph (8);
  - (c) the case has been appealed in a Contracting State and the appeal is not held in abeyance pending a resolution under Article 23 (Mutual Agreement Procedure) of the Convention; or
  - (d) the case involves primarily the application of domestic anti-abuse provisions.
- (7) Arbitration proceedings in a case begin on the later of:
  - (a) three years after the commencement date of that case, or other date as agreed by the competent authorities of both Contracting States in accordance with paragraph 6 of Article 23 (Mutual Agreement Procedure) of the Convention; and
  - (b) the date upon which the statement required by paragraph (8) has been received by the competent authorities of both Contracting States.