



MUTUAL AGREEMENT PROCEDURE

Guidance Notes

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List of Abbreviations

DTAA :	Double Taxation Avoidance Agreement
MAP:	Mutual Agreement Procedure
MLI:	Multilateral Instrument
MRA:	Mauritius Revenue Authority
MTC:	OECD's Model Tax Convention on Income and on Capital
OECD:	The Organisation for Economic Co-operation and Development
TIEA:	Tax Information Exchange Agreement

CHAPTER 1

Introduction

The purpose of this document is to set out the process through which the taxpayer can request assistance from the Competent Authority in Mauritius to resolve disputes arising from taxation not in accordance with the relevant DTAAAs.

Taxpayers may request assistance under the terms of the relevant DTAAAs (in conjunction with the relevant Articles of the MLI, where applicable)

MAP assistance is provided by the International Taxation Section of the Large Taxpayers Department of the MRA.

1.1 What is a Mutual Agreement Procedure (MAP)?

The MAP article in tax treaties allows designated representatives (the ‘competent authorities’) from the governments of the contracting states to interact with the intent to resolve international tax disputes. These disputes involve cases of double taxation (juridical and economic) as well as inconsistencies in the interpretation and application of a tax treaty.

Since most probable occurrences of double taxation are dealt with automatically in tax treaties through tax credits, exemptions, or the determination of taxing rights of the contracting states, the majority of MAP cases are situations where the taxation of an individual or entity is unclear.

A noteworthy point is that the MAP article in most tax treaties does not compel competent authorities actually to reach an agreement and resolve their tax disputes. They are obliged only to use their best endeavours to reach an agreement. Unfortunately, on some occasions competent authorities are unable to come to an agreement. Mauritius has opted for the mandatory binding arbitration provisions under Part VI of the MLI. These provisions will apply only between Contracting Jurisdictions which have chosen to apply Part VI to their Covered Tax Agreements.

1.2 Legal Basis for a MAP request

Pursuant to Section 76 of the Income Tax Act, as soon as a DTAA is ratified and has been published in the Government Gazette, its provisions are effective as if they had been incorporated into the Act.

Tax treaties concluded between Mauritius and other states generally contain an article based on Article 25 of the MTC. Article 25 of the MTC provides a mechanism to resolve difficulties arising where the actions of one or both of the contracting states result or will result for the taxpayer concerned in taxation not in accordance with the provisions of the DTAA. Under the equivalent of Article 25 of the MTC, within the relevant Mauritius DTAA, the competent authority of Mauritius shall endeavour to resolve such cases by mutual agreement with the competent authority of the other contracting state.

With regard to the practical operation of the MAP procedure, the above mentioned Article authorises the competent authorities to communicate with each other directly, without going through the diplomatic channels. The equivalent of Article 26 of the MTC, within the relevant Mauritian DTAA, applies to the exchange of information for the purposes of the provisions of this Article. The confidentiality of information exchanged for the purposes of MAP is thus ensured. The Mauritius tax treaties and Protocols can be accessed through the following link:

<http://www.mra.mu/index.php/taxes-duties/double-taxation-agreements>

1.3 The role of a competent authority

Tax treaties are usually concluded between the governments of two or more countries. These countries are then referred to as the contracting states to such an agreement. The term “competent authority” is used in tax treaties and in the Multilateral Convention to implement the Tax Treaty Related measures to prevent Base Erosion and Profit Shifting (MLI) to identify a position, person or body within a contracting jurisdiction to whom issues can be addressed to.

The role of the competent authority includes the exchange of information and providing assistance in collection of taxes based on the following exchange instruments: Tax treaties, Tax Information Exchange Agreements (TIEAs) and multilateral treaties. The competent authority is further charged with the responsibility to interact with its counterparts in any matters arising between the different contracting states pertaining to the interpretation or the application of a tax treaty, and to resolve any international tax disputes that might arise. A competent authority is generally committed to ensure a good faith application of tax treaties. The competent authority endeavours to resolve requests from its counterparts in accordance with the provisions of a particular tax treaty’s Article on MAP.

1.4 MAP profile for Mauritius

The competent authority for MAP in Mauritius is the Director-General of the MRA. To that effect, a dedicated unit (MAP Unit) has been created at the International Taxation Section of the Large Taxpayers Department.

For any further information on MAP, the MRA may be contacted at the following address –

MAP Unit

International Taxation Section

Large Taxpayers Department

Mauritius Revenue Authority

5th Floor, Ehram Court

Cnr Sir Virgil Naz & Mgr Gonin Streets

Port Louis

Email: Large taxpayer@mra.mu

[Panday.Ramkissoon@mra.mu](mailto: Panday.Ramkissoon@mra.mu)

Tel: (230) 207 6000

1.5 Details of Competent Authorities of Contracting States/Parties

Country Profiles on MAP which contain information about the Competent Authorities' contact details, domestic guidelines for MAP and other useful information for both tax authorities and taxpayers are available on the OECD website at:

<http://www.oecd.org/ctp/dispute/country-map-profiles.htm>

CHAPTER 2

Making a MAP Request and taxpayer role

2.1 How to make a MAP Request?

In order to request MAP assistance, a taxpayer must submit the MAP request in

writing to the relevant Competent Authority(ies), providing the required information as specified in section 2.4 below, of the action that has resulted or will result in taxation not in accordance with the DTAA.

The MAP request must be submitted within the time limit specified in the applicable

DTAA (refer to section 2.3 below).

2.2 In what instances would a MAP be applicable?

- Taxation not in accordance with the DTAA
- Dual residence
- Determination of the place of effective management
- Withholding taxes withheld not in accordance with the relevant tax treaty
- Transfer pricing MAP cases

More information on each of the above is provided in Annexure 1.

2.3 Time limits for requesting access to MAP

The time limit in which a MAP request should be submitted is contained in the relevant tax treaty. Generally, Mauritius tax treaties follow Article 25 of the OECD/UN Model Tax Convention and provide that a request for MAP assistance must be submitted within 3 years (except for DTAA with Nepal which provides for two years) from the first notification of the action resulting in taxation not in accordance with the DTAA.

A MAP request will be denied by the competent authority of Mauritius, if the MAP request is not submitted within the time limits provided for in the tax treaty.

Mauritius Revenue Authority (MRA) considers the date of the notice of assessment to be generally regarded as the first notification.

2.4 Minimum information to be provided in a MAP request

Requests need to comply with specific minimum information requirements in order for the Competent Authority of Mauritius to be able to process the particular request. The following minimum information are required for a MAP Request.

1. Date of the Request
2. Name, address and TAN of the taxpayer.
3. The provision of the specific article of the DTAA which the taxpayer considers is not being applied correctly by either one or both contracting states.
4. The relevant facts of the case including any documentation substantiating these facts, the period involved and the amounts involved.
5. An analysis of the issues involved supported by relevant documentation.
6. Where a request has also been made to the competent authority of the other contracting state, a copy of that submission with relevant documentation.
7. If the issue has been previously dealt with by some other means (such as an advance ruling, advance pricing agreement (APA) or settlement agreement), then a copy of any relevant ruling or agreement.
8. A statement indicating whether the taxpayer has filed a notice of objection, notice of appeal.
9. If the MAP request has been submitted to another authority under another instrument that provides for a mechanism to resolve treaty-related disputes, then a copy of that submission (including all related documentation) unless the content of both MAP submissions are exactly the same.
10. A final statement confirming that all information provided in the MAP request is accurate and additional information will be provided in a timely manner if required by the competent authority.

11. A copy of any settlement or agreement reached with the other jurisdiction which may affect the MAP process.

The receipt of the information outlined above will determine the start date for a MAP request under a DTAA. This start date is relevant for the purpose of computing the time taken to resolve a MAP request. A MAP request will not be regarded as initiated until all of the relevant information have been provided.

2.5 Analysis of a MAP request and taxpayer role

As the MRA begins the detailed analysis of the MAP request, it is likely that there will be further information requests. Taxpayers are expected to cooperate fully with the MRA by providing complete and accurate information without delay when requested. Without proper information and documentation, the MRA may be unable to resolve disputes. MAP discussions between the MRA and the other Competent Authority are a government-to-government process. Taxpayer involvement in the MAP is generally limited to presenting its views to both Competent Authorities and providing the relevant information. Taxpayers are not involved in the actual discussions between the Competent Authorities. However, where appropriate, taxpayers may be invited to make a presentation before the Competent Authorities to ensure a common understanding of the facts of a particular case. Throughout the MAP process, the taxpayer should ensure that each tax administration is provided with the same information at the same time. This applies to any information submitted by the taxpayer to either tax administration as part of the MAP process. The MRA will keep the taxpayer informed of the status of their MAP request on an on-going basis.

2.5.1 Considerations by the Competent Authority upon receiving a MAP Request

Upon receipt of a taxpayer's MAP request, the MRA will determine whether the request is justified and whether it is possible to resolve the case without the involvement of the other Competent Authority.

Generally, for a request to be considered justified, the following conditions must be met:

- The taxpayer must have reasonable grounds upon which to seek assistance from the MRA; and
- The MRA should receive timely notification in writing from a taxpayer or the other Contracting State of a proposed adjustment.

The mere existence of an audit or an examination of a taxpayer's activities in the other Contracting State/Party or a request from another Contracting State/Party for information about the taxpayer's activities carried on in the other Contracting State would not generally be sufficient to justify a request.

Where the taxpayer has provided the required information listed in paragraph 2.4 above, the MRA shall not refuse a MAP request on the argument that insufficient information was provided.

Where the taxpayer has not provided all the required information to enable the MRA to process a MAP request, return notification will be sent to the taxpayer to inform him which information or documentation is missing and that the MAP request cannot be handle without the submission of this information or documentation

When a MAP request is received from a taxpayer, the MRA will take the following actions:

- (1) Acknowledge receipt of such request within 7 working days from the date of receipt;

- (2) Examine the request and the taxpayer in writing within four weeks from date of receipt whether their request has been accepted or rejected.;
- (3) Where the request is justified and has been accepted, inform the other Competent Authority within four weeks from the date of receipt of the MAP request.
- (4) provide the taxpayer with the reasons for its decision where a request is rejected.

Where time limits specified in the previous paragraph cannot be achieved, the MRA shall advise the taxpayer and indicate the likely timeframe. Where additional information or clarification from the taxpayer is required by the MRA in order to reach a decision as to whether it can accept the MAP request, the four weeks' time limit will commence when the additional information is received by the Competent Authority.

The MRA may consult with the other Competent Authority before declining a MAP request. If the Competent Authority receiving the request ultimately concludes that the MAP request will not be accepted, it will advise the taxpayer in writing, giving the reasons for such decision.

2.5.2 Confidentiality

The information submitted to the MRA in connection with a MAP request will be treated as confidential.

The exchange of information between the MRA and the Competent Authority of the treaty partner country in relation to a MAP shall be carried out in accordance with the provisions of the relevant DTAA. Information exchanged under the DTAAs is confidential and may only be used and disclosed in accordance with the provisions of the treaty.

2.5.3 Interaction with domestic remedies

The MRA is bound by the judicial decisions. Where a judicial decision concerning any issue covered by a MAP request becomes final before the conclusion of the MAP, the MRA shall inform the competent authority of the other State about such decision and that it is bound by it.

The MRA does not envisage the parallel undertaking of MAP where the taxpayer is simultaneously pursuing judicial or administrative remedies. However, a taxpayer may submit a request for MAP assistance while judicial or administrative proceedings are on-going. In such cases, the competent authority will generally request that the taxpayer agrees to the suspension of its judicial or administrative remedies pending the outcome of the MAP. If the taxpayer does not agree to suspend the administrative or judicial remedies, the competent authority will delay the MAP process pending the outcome of the administrative or judicial proceedings.

If the competent authorities cannot reach an agreement through the MAP process or if the taxpayer rejects the agreement between the competent authorities, the taxpayer can then pursue any available domestic administrative or judicial remedies.

CHAPTER 3

The MAP Process

3.1 Unilateral Stage

For MAP requests where Mauritius is the jurisdiction raising the adjustment / assessment and a request is made to the MRA under the MAP article of a DTAA the MRA will first, if the request appears to be justified / well founded, attempt to resolve the matter unilaterally, without consulting the other Competent Authority.

3.2 Bilateral stage

If the MRA cannot itself resolve the matter, but is in agreement with the taxpayer's request for a MAP, it will take up the matter with the Competent Authority of the other Contracting State under the relevant tax treaty to trigger the bilateral stage of the MAP process.

During the bilateral stage the MRA will endeavour to resolve the matter by mutual agreement with the Competent Authority of the other jurisdiction involved. Paragraph 2 of Article 25 of the MTC requires both Competent Authorities to negotiate with a view to the avoidance of double taxation. However, in the absence of mandatory binding arbitration, there is no guarantee that the case will be successfully resolved

3.3 Commencing and Conducting the MAP

Whilst the time taken to complete a MAP case may vary according to its complexity, the MRA will endeavour to conduct the MAP process as expeditiously as possible and to complete the case within twenty-four (24) months from the date of acceptance of the taxpayer's MAP request.

During the evaluation stage, the MRA will endeavour to advise its counterpart on progress at least once every ninety (90) days. Communication may be by way of telephone, emails, briefing notes, correspondence, teleconferencing, face-to-face meetings or any other form acceptable to both Competent Authorities.

To achieve timely resolution and to facilitate negotiations, the MRA, as a matter of priority, will consider the preparation and transmission of a position paper to the Competent Authority within one hundred and eighty (180) days of advising the latter that the MAP request has been accepted. Where circumstances are such that it is not possible to provide the position paper within one hundred and eighty (180) days, the MRA will advise the other Competent Authority in writing as to the reasons why the position paper cannot be so provided and the likely timeframe.

The negotiation of a MAP case is a government-to-government process. While a taxpayer does not have a legal or other right to attend negotiations between the Competent Authorities or to observe the negotiations, the MRA recognises that the taxpayer is a stakeholder in the MAP process and therefore, in exceptional cases, a presentation by the taxpayer may be helpful in the resolution of the case. Any such presentation would occur pursuant to a mutual agreement of the Competent Authorities involved and would be limited to providing factual information.

3.4 Concluding the MAP

When the Competent Authorities resolve a MAP case, the MRA will communicate the terms of the resolution to the taxpayer as soon as possible.

If the terms and conditions of the resolution are not satisfactory to the taxpayer, the taxpayer may withdraw from the MAP process and pursue any available right to appeal.

The Director-General of the MRA shall not implement the resolution under the MAP process with a taxpayer until an exchange of letters between Competent Authorities has occurred. Once letters have been exchanged and the taxpayer has accepted the resolution, the Director-General, shall give effect to the resolution in Mauritius without delay. In the event that the MRA is unable to reach agreement with the Competent Authority of the foreign tax administration and in the absence of mandatory binding arbitration, the

MRA will notify the taxpayer in writing, setting out why agreement could not be reached. Except for cases involving arbitration (refer to paragraph 3.8), the MRA is not obliged to engage in further discussions with the other Competent Authority where the MRA or the other Competent Authority believes that agreement cannot be reached.

The Competent Authorities will endeavour to resolve MAP cases in accordance with the relevant provisions and in a timely manner. The time taken to resolve a MAP case may vary according to its complexity, but Competent Authorities will endeavour to reach resolution on MAP cases within an average timeframe of 24 months.

3.5 Withdrawal of a MAP request

If the taxation not in accordance with the provisions of the tax treaty is resolved through domestic remedies, the taxpayer must notify the applicable competent authority to withdraw the MAP request. A foreign competent authority may also withdraw a MAP in the event that unilateral relief is provided, by informing the MRA's competent authority that such relief has been granted. A taxpayer can withdraw its request for MAP at any time before a MAP agreement has been reached. Withdrawal of a request for MAP must be made in writing, stating the reasons for the withdrawal. The competent authority will acknowledge receipt of the taxpayer's request for withdrawal, close the MAP and inform the other Competent Authority accordingly.

3.6 Circumstances that may give rise to further notification to taxpayers

The taxpayer should be notified in writing in the following circumstances:

- Upon request, or when necessary, update the taxpayer on the status of the MAP to the extent that the update does not hinder the MAP process.
- Upon conclusion of a MAP case, providing the details of the decision or agreement.

- Upon implementation, to provide the procedures to follow after an agreement is reached to process and provide relief (if applicable).

3.7 Possible Outcome of a MAP Process:

As already indicated above, a MAP process may result in one of the following:

- Unilateral Relief (refer to paragraph 3.1).
- Competent Authority agreement for full/partial elimination of double taxation or no Competent Authority agreement is reached, including agreement to disagree (refer to paragraphs 3.2 to 3.4);
- MAP request withdrawn by the taxpayer(refer to paragraph 3.5)

3.8 Arbitration

MAP Arbitration provisions are currently included in the DTAA with Congo and Monaco but are subject to an exchange of notes to establish the procedures and bring the MAP arbitration into effect.

The MLI Arbitration provisions will only apply in DTAAAs with countries which have also adopted the Arbitrations provisions and ratified the MLI.

The arbitration decision is binding on both contracting states and has to be implemented, notwithstanding any time limits in the domestic laws of the contracting states.

Annex

1.0 Taxation not in accordance with the DTAA

The relevant Article of the DTAA equivalent to Article 25(1) and (2) of the MTC provides for the elimination in a particular case of taxation that is not in accordance with the DTAA. Examples include –

- (i) cases where lack of information as to the taxpayer's actual situation has led to the misapplication of the DTAA, especially regarding the determination of residency (Article 4);
- (ii) the existence of a permanent establishment (Article 5);
- (iii) pension and annuities (Article 17); and
- (iv) the temporary nature of the services performed by an employee (Article 15).

2.0 Dual residence

The most common occurrences for individuals are cases of dual residency, namely, where an individual is considered a resident for tax purposes of two countries, under their respective domestic laws. This can happen, because the domestic laws of the two countries may apply different tests for determining residency. As part of its object and purpose of avoiding double taxation, a tax treaty will only allow one of these countries to treat that person as a resident for purposes of the treaty, and it therefore sets forth criteria to determine which of the two countries the person has the greater connection with. That country will then be treated as the only country of residence when applying the treaty.

Paragraph 2 of Article 4 (Resident) of the MTC seeks to solve this problem by providing a series of “tiebreaker” tests, each serving to determine the single residence country for treaty purposes. In the application of those tests, there may be different views taken by the two countries, for example as to where the person's “permanent home” or centre of vital interests is, and there might, therefore, be a need to resort to MAP to resolve differences between the treaty partner countries.

Moreover, even if both countries agree on how the tiebreaker tests operate, these tests do not always give a result. The last tiebreaker test tries to deal with this by providing that “the competent authorities of the Contracting States shall settle the question [that is - of individual residence for treaty purposes] by mutual agreement.” In other words, if the issue is not solved by the other tiebreaker rules, it should be solved by mutual agreement to help avoid double taxation.

3.0 Place of effective management

Multiple facts need to be taken into account, often involving multiple locations, and from those facts and locations it is necessary, for tax treaty purposes, to determine a single dominant place of effective management. The determination looks at where the key management and commercial decisions are regularly and predominantly made. Although the determination of the place of management is not based on a snapshot requiring an assessment at a particular moment in time, when a company changes its place of effective management the change in residence occurs on a particular date and is not in relation to a year of assessment.

4.0 Withholding taxes withheld not in accordance with the relevant tax treaty

The MAP is also applicable in the absence of any double taxation contrary to the tax treaty, once the taxation in dispute is in direct contravention of a rule in the tax treaty. An example would include when one state taxes a particular class of income in respect of which the tax treaty gives an exclusive right to tax to the other jurisdiction (e.g. in Mauritius). In these instances the Mauritian resident should enquire with the withholding agent in the other jurisdiction the reason for such withholding and whether there are any relevant application forms for a refund for incorrectly imposing withholding taxes. In some instances, jurisdictions may have directive forms that must be stamped by the other tax authority to ensure that withholding tax is not imposed in the future. Such cases would only become a MAP if the withholding agent or foreign tax authority, as relevant, refuses to refund the withholding taxes deducted. The Mauritian resident can submit a MAP request providing all information as set out in 2.5.

5.0 Transfer pricing MAP cases

Different positions taken by two or more administrations, on what constitutes arm's length conditions for a transaction between associated enterprises, can lead to economic double taxation. This also applies in the context of transfer pricing problems relating to economic double taxation. Mauritius provides access to MAP in transfer pricing cases in particular.

A transfer pricing MAP case is where the taxpayer's MAP request relates to –

- (i) the attribution of profits to a permanent establishment (Business Profits Article of the tax treaty), including the determination of whether a permanent establishment exist in a contracting state (Permanent Establishment Article of the tax treaty); or
- (ii) the determination of profits between associated enterprises (paragraph 1 of the Associated Enterprises Article of the tax treaty) and the corresponding adjustments to be made in pursuance of paragraph 2 of the same Article both as concerns assessing whether they are well founded and for determining the amount.

In determining if taxation of relevant transactions will satisfy the arm's length principle, and thus result in taxation in accordance with the provisions of a tax treaty, Mauritius will resort to the OECD Transfer Pricing Guidelines and the Commentary to the MTC.