

FREQUENTLY ASKED QUESTIONS (FAQ) MUTUAL AGREEMENT PROCEDURES (MAP)

A. GENERAL ISSUES

1. What is MAP?

The Article on Mutual Agreement Procedure in Malaysia's Tax Treaties authorises the Malaysian Competent Authority (CA) to interact with CAs of Treaty Partners with the intent to resolve taxation not in accordance with the provisions of the Double Taxation Avoidance Agreement (Tax Treaty).

This includes international tax disputes involving double taxation and any difficulties or doubts arising regarding the interpretation or application of the Tax Treaty on a mutually agreed basis. The MAP mechanism is independent from the legal remedies available under Malaysian domestic law.

2. When can you request for a MAP?

You may request a MAP when you consider the action of either Malaysian or its Treaty Partner's tax administrations, or both; results or will result in taxation not in accordance with the Tax Treaty.

3. What are examples of 'taxation not in accordance with the provisions of the Tax Treaty'?

Examples of MAP issues which may be classified as 'taxation not in accordance with the provisions of the Tax Treaty' may include the following:

- i. Transfer pricing adjustments as a result of an audit by the tax authority of Malaysia, i.e., the Inland Revenue Board of Malaysia (IRBM) or transfer pricing audit by the treaty partner's tax jurisdiction. The MAP request is to eliminate double taxation or to notify the CA of the Treaty Partner to allow a corresponding adjustment to the income of the associated person to prevent economic double taxation that may arise from the adjustments made.

- ii. For the Malaysian taxpayer who is a resident of Malaysia and has a permanent establishment (PE) in another state that was subjected to audit by the treaty partner, a MAP request can be submitted concerning the elimination of double taxation with respect to the audit adjustments on its overseas PEs in the treaty partner jurisdiction.
- iii. A Malaysian resident taxpayer is also considered to be a resident of a Treaty Partner under that State's domestic law, and each state asserts that the taxpayer is a resident of its jurisdiction for purposes of the Tax Treaty. If unresolved, the taxpayer could be subjected to tax on the same income in both states. A MAP request would initiate discussions between the CAs regarding the proper application of the tiebreaker rules contained in the Resident Article of the Tax Treaty.
- iv. A withholding tax is levied beyond what is allowed under an applicable Tax Treaty by a Treaty Partner on a payment to a Malaysian resident. The Malaysian resident taxpayer may request the Malaysian CA to address the taxation not in accordance with the Tax Treaty with the CA of the Treaty Partner.
- v. The tax audit reclassified certain business transactions as royalty according to the domestic provision and application, which resulted in an audit adjustment. This resulted in double taxation in relation to the audit adjustment amount.

4. To whom can you present a MAP request?

Depending on the applicable Tax Treaty, a MAP request may be presented to:

- i. the CA of the State of residence or nationality; or
- ii. the CA of either Malaysia or its Treaty Partner.

5. Is there any time limit for a MAP request?

The time limit for a MAP request depends upon the specific terms period mentioned in the MAP article under the particular Tax Treaty under which the MAP is invoked. Therefore, for each case, the applicable Tax Treaty should be referred. Generally, the time limit is three years under Malaysia's Tax Treaties.

Where the time limit to invoke MAP is not specified in the applicable Tax Treaty, the Malaysian CA requires the MAP request to be submitted within three years from the first notification of the action, resulting in taxation not in accordance with the provisions of that Tax Treaty.

6. How do we determine 'the first notification of the action resulting in taxation not in accordance with the provisions of that Tax Treaty'?

Notification of the action resulting in taxation not in accordance with the provisions of the Tax Treaty includes an example such as a relevant notice of assessment. The determination of the first notification is illustrated in examples 1 and 2.

Example 1:

Notice of Additional Assessment for the Year of Assessment (YA) 2018 was issued on 1.1.2020 as a result of an audit. That notice is considered as 'the first notification'. Hence, taxpayer has until 31.12.2022 to submit the MAP request.

Example 2:

Same information as in example 1 but the amended Notice of Assessment (partial tax reduction) was issued on 1.1.2021 based on acceptable new documentation submitted by the taxpayer. In this scenario, the taxpayer still has until 31.12.2022 to submit MAP request because the 'first notification' is the notice dated 1.1.2020.

7. What is the timeframe for a MAP process?

The time required to complete a MAP case will depend on a number of factors, including the complexity of the case and the completeness and accuracy of information

provided during the MAP process. In general, competent authorities including Malaysia will endeavour to complete a MAP case within 24 months from the date of its acceptance. It should also be noted that the time required to complete a case may be longer as the case involves correspondence between countries CA in different jurisdictions.

B. SUBMISSION OF A MAP APPLICATION

8. What is the difference between the pre-filing and the official filing of MAP?

Pre-filing is required for MAP cases submitted to Malaysia's CA regarding MAP issues under relevant Tax Treaty articles. Generally, pre-filing is required to understand the case's background, especially when the double taxation or MAP issues resulted from the action of Malaysia's tax authority (i.e. IRBM).

9. When is the MAP filing considered official?

The submission of a MAP request from the taxpayer does not automatically lead to the official acceptance of the MAP case. Acceptance of the MAP will be based on the eligibility of the MAP request. Hence, the request is considered official after approval from the Malaysian CA for the request submitted to the Malaysian CA.

10. To whom should you submit the MAP Application?

All formal MAP requests should be addressed and sent to the Office of MAP at the address below:

The Competent Authority
Inland Revenue Board of Malaysia
Department of International Taxation
Menara Hasil Level 12
Persiaran Rimba Permai,
Cyber 8, 63000 Cyberjaya,
Selangor, Malaysia.

A copy of the request should also be sent via email to map@hasil.gov.my

C. DOCUMENTATION REQUIREMENT

11. Why is the submission of accurate and complete information important for a MAP application?

The Malaysian CA may deny any MAP request or consider a case to be closed or automatically withdrawn or rejected if –

- i. The taxpayer has failed to provide complete and accurate information requested within the stipulated time period;
- ii. The case appears to be not justified or not admissible based on limited information or documentation submitted to the Malaysian CA; or
- iii. At any time, the taxpayer is found to have made any misrepresentation during the MAP.

12. What is the timeframe for the taxpayers to provide complete and accurate information?

Taxpayers have 30 days to submit the information or additional information requested in the notification letter of the relevant request.

D. DOCUMENTATION REQUIREMENT

13. If a taxpayer has made an appeal under the domestic remedies, is the taxpayer allowed to apply for MAP?

Presenting an application to the Malaysian CA to invoke MAP will not deprive a person of his right to appeal under subsection 99(1) of the Income Tax Act 1967 (the Act) via a written notice of appeal in the prescribed form.

The usual procedures for appeal under the Act shall apply, including administrative dispute resolution, which is under the purview of the Dispute Resolution Department, IRBM.

14. Can a taxpayer apply for MAP if Special Commissioners of Income Tax (SCIT) or the Court's decision has been made on an appeal made by the taxpayer?

Malaysian CA will not make a tax adjustment when the SCIT or court has decided on the taxpayer's appeal under section 99 of the Act on the same issues in the same tax appeal case.

Nevertheless, the Malaysian CA may present the MAP case to the CA of the Treaty Partner and request the latter to take measures to avoid double taxation.

E. IMPLEMENTATION OF MAP OUTCOME

15. What happens if taxpayers reject the MAP outcome?

If a taxpayer is not satisfied with the outcome arrived at by the competent authorities, the taxpayer may reject it. If this occurs, the competent authorities will consider the case to be closed since efforts had been exhaustively contributed in reaching the outcome.

16. What happens if taxpayers withdraw MAP requests?

When the taxpayer decides to withdraw the MAP request at any point prior to reaching the MAP outcome, the case will be considered closed. As the MAP process involves significant effort, time and resources from the taxpayer and the competent authorities of both jurisdictions, a withdrawal refrains the taxpayer from another MAP on the same issue for the same year of assessment as presented in the withdrawn MAP request

17. Who will implement the MAP outcome?

The officer in charge of the MAP office will notify the relevant branch office of the MAP outcome for necessary implementation. Subsequently, the branch office will communicate with the taxpayer on relevant documentation for the implementation process.

18. What is the timeframe for an implementation process?

The timeframe for implementing MAP agreements is within 90 days from the date of exchange of closing letter between CAs. The MAP Office will notify the relevant state or special branch office of the due date to implement a MAP outcome. However, the process may take longer if unavoidable issues arise.