

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

1. General

1.1. When can you request 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 Double Taxation Avoidance Agreement (Tax Treaty). Examples of such situations include issuance of an amended assessment for transfer pricing adjustment, resident status, withholding tax, permanent establishment and characterisation or classification of income.

1.2. Due date for MAP request

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

Examples on how to calculate the 3 year period for cases with amended assessment

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.

2. MAP Application

MAP request must formally be in writing and addressed to both the Competent Authority addresses in the Ministry of Finance and Department of International Taxation (paragraph 8.1 and 8.2 of the MAP Guidelines 2017 refers).

3. Issues covered

3.1. Article(s) under the Tax Treaties

MAP request must indicate at least an Article in the relevant Tax Treaty between Malaysia and Treaty Partner. Taxpayer must establish reasons for element of eliminating double taxation that arise in relation to MAP issue(s).

3.2. Where there is tax/deemed double taxation

Taxpayer need to show that element of double taxation is probable and not just possible to arise related to the MAP issues for instance in disputing the interpretation or the application of domestic provision that is believed to result in taxation not in accordance with the applicable tax treaty.

4. Examples of MAP Issues

4.1. Allocation and attribution cases - transfer pricing audit by IRBM

In relation to the transfer pricing adjustments, the Malaysian taxpayer may submit a MAP request to the Malaysian CA 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.

4.2. Allocation and attribution cases – transfer pricing audit by treaty partner’s tax jurisdiction

For the Malaysian taxpayer who is a resident in Malaysia and has a permanent establishment (PE) in another state which 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 PE's in the treaty partner jurisdiction.

4.3. Others

4.3.1. Resident status

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.

4.3.2. Withholding Tax

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.

4.3.3. Royalties

Tax audit has reclassified certain business transaction as royalty according to the domestic provision and application which resulted in audit adjustment. This has resulted to double taxation in relation to the audit adjustment amount.

5. Documentation

5.1. Pre-filing

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

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

5.2. Official Filing

5.2.1. When does the MAP filing considered official?

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

5.2.2. Determination of amount for MAP request

5.2.2.1. Taxpayer need to indicate clearly the amount of double taxation disputed in the MAP request. The amount should be able to be supported by relevant documents and computations. Example below illustrates the determination of MAP amount for a transfer pricing case.

Enterprise M in Malaysia sells raw material to associated enterprises namely, B (in Country X), C (in Country Y) and D (Country Z). Malaysia has tax treaty with Country X, Y and Z. Upon audit, an additional tax assessment was raised resulted from audit finding on the amount of sales value for transaction of sales to B (Country X) and C (Country Z) as follows:

	B (Country X) (RM)	C (Country Y) (RM)	D (Country Z) (RM)	Total (RM)
Amount of sales reported as in Return Form C	100	50	100	250
Adjusted income from audit	130	50	120	300
Amount under MAP request	30	-	20	50

The audit adjustment on income has led to double taxation and MAP request was submitted by Enterprise M to the Malaysian CA. The request must indicate the amount for transaction in dispute and relevant treaty partner. As for the example above, the MAP request is submitted to eliminate double taxation related to transactions with B (Country X) and D (Country Z) under relevant article (i.e. Article Associate Enterprise).

6. Implementation of MAP

6.1. What happen if taxpayer 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 exhaustively contributed in reaching the outcome. Competent authorities will advise the taxpayer accordingly and the taxpayer may continue to proceed the domestic appeal. If the other redress mechanism (appeal or court decision) does not reverse the adjustment in its entirety, double taxation may remain.

6.2. What happen if taxpayer withdraw MAP request

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

6.3. If the implementation of MAP effect subsequent Years of Assessment, what do taxpayers need to do

Taxpayer needs to submit amended Tax Return for respective years' assessments to relevant branch. The subsequent years' amendments are not automatically updated or revised if no request is received from taxpayer.