

## **MUTUAL AGREEMENT PROCEDURE HANDBOOK**

### **Mutual Agreement Procedure – What is it?**

The Mutual Agreement Procedure (MAP) is provided for in Double Tax Conventions (DTCs), the aim of which is to regulate the allocation of tax rights in relation to profits from cross-border economic activities and to prevent double taxation, and enables competent authorities of the Contracting States to consult each other with a view to resolving issues arising from the application of the DTCs.

It is a procedure of public international law, which is irrespective of the remedies provided by the domestic law of the States. In particular, it is a mechanism for resolving international tax disputes regarding double taxation issues as well as difficulties of interpretation and application of the DTCs. International double taxation may be juridical, when a person is taxed in two States in respect of the same income, or economic, when the same income, which is in the hands of different persons, is included in the tax base by more than one tax authorities.

MAP is provided for in Article 25 of the OECD Model Tax Convention on Income and on Capital and the Commentaries thereon.

Greece has concluded so far 57 DTCs, which (except for the DTC with the United Kingdom) contain MAP provisions.

In terms of domestic law, see also the provisions of Article 63A of the Code of Tax Procedure (Law 4174/2013) and the Decision No 1049/2017 of the Governor of the Independent Authority for Public Revenue.

### **Which cases are covered within the scope of MAP?**

MAP applies solely to taxes that are expressly covered by the applicable DTC as well as to persons that are residents of one of the Contracting States pursuant to the provisions of the applicable DTC, including cases where the rules of a DTC are related to domestic tax rules that have not been correctly applied.

Interest, surcharges and penalties that result from adjustments made by the Greek tax authorities and are borne by the taxpayer and concern a MAP case may be dealt with as part of the MAP. Relief from interest, surcharges and penalties is considered by the competent authority on a case-by-case basis.

Where a person considers that the actions of one or both the Contracting States result or will result for him in taxation not in accordance with the provisions of the DTC, he may present his case to the competent authority of the Contracting State of which he is a resident.

A person may file a MAP request regardless of whether the action that results or will result in taxation not in accordance with the provisions of the DTC has been taken by the Greek or foreign competent authorities.

An indicative list of cases that are covered within the scope of MAP is set out below:

- Dual residence cases: i.e. a Greek resident is also considered to be a resident of another State under that State's domestic law, and therefore each State asserts that the taxpayer is a resident of its jurisdiction for the purposes of the applicable DTC. As a result the taxpayer could be subject to tax on the same income in both countries.
- Cases where withholding tax in the State of source is not in accordance with the applicable DTC: i.e. tax is withheld on income from dividends, interest or royalties at a rate in excess of the rate stated in the DTC.
- Cases where a State taxes a particular type of income in respect of which the DTC gives an exclusive right to tax to the other State.
- Cases where a person has rendered services abroad or receives pension from abroad and both the Contracting States claim the right to tax this income.
- Dispute over the type of income: an item of income is characterized differently by the Contracting States.
- Dispute over the existence of a permanent establishment: i.e. a Greek resident is taxed in the other State on the business income earned in that State despite not having a permanent establishment in that other State.
- Cases where the arm's length principle is not applied to the allocation of profits between associated enterprises: the same income is taxed in the hands of different persons following the transfer pricing adjustments made by tax authorities of different States.
- Cases where the imposition of tax infringes the non-discrimination provisions of DTCs. According to the principle of non-discrimination, the nationals of a Contracting State should not be subjected in the other Contracting State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which nationals of that other State may be subjected.

#### **Who can make a MAP request?**

All persons (natural or legal) that are residents of one of the Contracting States under the provisions of the applicable DTC and consider that they have been subject to taxation not in accordance with the provisions of the DTC as a result of the actions of one or both the Contracting States can make a MAP request. The taxpayer may present his case to the competent authority of the Contracting State of which he is a resident. Where the MAP request concerns the application of non-discrimination provisions, the taxpayer may present his case to the competent authority of the Contracting State of which he is a national.

If the taxpayer has transferred his residence to the other Contracting State subsequently to the measure objected to, he must nevertheless still present his case to the competent authority of the State of which he was a resident during the year in respect of which such taxation has been or is going to be imposed.

**Should the taxpayer exhaust all remedies available to him under the domestic law before making a MAP request?**

No, MAP is an administrative procedure, which is provided for in the DTCs. MAP is irrespective of remedies provided by the domestic law of the States.

**Filing of a MAP request**

Submission of a written request in Greek language is required for the initiation of a MAP by the Greek competent authority.

Depending upon its content, a MAP request is submitted to and examined by the following tax authorities of the Independent Authority for Public Revenue:

- All MAP requests except for transfer pricing cases should be addressed to:

Independent Authority for Public Revenue  
International Economic Relations Directorate – Tax Affairs Section  
8, Karageorgi Servias Str.  
101 84, Athens, Greece  
Email: [dos.a@aade.gr](mailto:dos.a@aade.gr)  
Tel. No: +30 210 3375 196-197  
Fax: +30 210 3375 854

- MAP requests for transfer pricing cases should be addressed to:

Independent Authority for Public Revenue  
General Directorate of Tax Administration  
Directorate of Audits – Section D  
10, Karageorgi Servias Str.  
101 84, Athens, Greece  
Tel. No: +30 210 3375 307  
Email: [d.eleg4@mofadm.gr](mailto:d.eleg4@mofadm.gr)  
Fax: +30 210 3375 354

**ATTENTION: A copy of the request –without its accompanying documents- should be also communicated to the International Economic Relations Directorate - Section A' of the Independent Authority for Public Revenue**

**Time limits for making a MAP request**

A MAP case must be presented within the time limits laid down by the applicable DTC from the first notification of the action resulting in taxation not in accordance with the provisions of the DTC.

Most of the DTCs that Greece has concluded set a time limit of two or three years. Where a time limit for making a MAP request is not indicated by the DTC, a time limit of three years applies.

### **Minimum information required for a valid MAP request**

A valid MAP request should include at least the following:

- 1.** Identification of the taxpayer making the MAP request: name, address, tax identification number (TIN), contact details and for transfer pricing cases, details about the enterprise making the request as well as other associated parties, including any permanent establishments, that are involved in the relevant transactions.
- 2.** Basis for the request: the MAP request should state the specific DTC, including the provisions of its specific article(s) which the taxpayer considers that are not being correctly applied.
- 3.** Facts of the case: the MAP request should contain all the relevant facts of the case including the taxation year(s) concerned and the amount of tax in dispute (in both local currency and foreign currency if necessary) as well as any supportive documents. For transfer pricing cases, details on the relations between the enterprise and other parties involved in the relevant transactions.
- 4.** Analysis of the issue to be resolved: the taxpayer should provide a statement to present the reasons why he considers that double taxation arises and should refer expressly to the provisions of the applicable DTC. The taxpayer should support his analysis with relevant documentation in the Greek language (i.e. copies of tax audit reports, tax assessments or equivalent documents leading to the alleged double taxation). For transfer pricing cases, detailed description and documentation for the relevant transactions and the methodology used for the adjustments.
- 5.** Whether the MAP request was also submitted to the competent authority of the other Contracting Party. If so, the MAP request should contain the date of such submission, the competent authority to which the MAP request was submitted and a copy of the request and its accompanying documents.
- 6.** Details about any administrative appeal, closure, administrative resolution of the dispute, administrative settlement, appeals and proceedings before a Court initiated by the taxpayer or related parties in any of the Contracting States in relation to the MAP case, as well as about any Court decision regarding the case. If the case is still pending before a Greek Court, and provided that the case has not been examined yet, a Court registry's attestation that the relevant remedy has not been considered yet is required.
- 7.** In case there is no document legitimizing the designation of legal representative, a signed statement confirming that the representative has been authorized to act on behalf of the person who presented the case regarding all issues that are related to the request is required.
- 8.** A statement of the person presenting the case, which is equivalent to a solemn declaration under Art. 8 of Law 1599/1986, confirming that all information and documentation provided is accurate.

9. An optical disc (CD or USB stick) including the abovementioned information and documentation.

The competent authority may request for additional information or documentation to be submitted by the taxpayer within two months. This period of two months can be extended following a taxpayer's request. The taxpayer can also voluntarily submit additional information throughout the procedure.

For transfer pricing cases, the parallel submission of the minimum information by the associated enterprise to the competent authority of the other Contracting State is recommended.

**Are there any fees for a MAP request?**

No, there are no fees charged to taxpayers for a MAP request.

**MAP requests not accepted for consideration**

MAP access may be denied by the competent authority in the following cases:

- if the request was not submitted in a timely manner (*see above*)
- if the request does not concern taxation that is not in accordance with the provisions of the DTC
- if the taxpayer does not furnish the minimum information within the time limits set by the competent authority
- if the years concerned have been subject to statute of limitation under domestic law at the time of submission of the MAP request
- if a final decision regarding the case has been rendered by the relevant Court in the State of residence. Exercising a legal remedy does not preclude the competent authorities from examining the MAP request, provided that the case has not been examined by the relevant Court at the time of submission of the MAP request.

**Description of the procedure**

The competent authority confirms the receipt of the taxpayer's request within one month of receipt by a registered letter sent to the taxpayer's postal address or by e-mail sent to the taxpayer's e-mail address.

The competent authority first considers whether the minimum information required is submitted as well as the timeliness and admissibility of the request and then considers whether the request is justified, namely whether there is or will be taxation which is not in accordance with the provisions of the DTC. In case MAP access is denied (*see above*), the competent authority shall inform the taxpayer in writing, and the procedure is terminated.

If the competent authority considers the objection to be justified and considers that the taxation which is not in accordance with the applicable DTC is due wholly or in part to a measure taken in the taxpayer's State of residence, it must give the taxpayer satisfaction as speedily as possible by making such adjustments or allowing such reliefs as appear to be justified, and as a result the issue can be resolved without resort to MAP.

If the competent authority considers the objection to be justified but is not itself able to arrive at a satisfactory solution, it shall endeavour to resolve the case by mutual agreement with the competent authority of the other Contracting State with a view to the avoidance of taxation that is not in accordance with the applicable DTC. The consultation between the competent authorities shall be carried out by an exchange of letters setting out their positions. In general, the competent authorities may communicate with each other by letter, facsimile transmission, telephone, direct meetings or any other convenient means.

### **MAP outcome**

The Contracting States' agreement for the elimination of double taxation can be reached either by means of an exchange of letters between their competent authorities or in the form of a joint document signed by their competent authorities. In case that for any reason the Contracting States do not reach an agreement, the procedure is terminated by drafting a document that ascertains lack of agreement and the taxpayer's tax obligations are determined by each State. Within one month from the termination of the procedure, the taxpayer is notified in writing about the MAP outcome and may accept it within sixty (60) days.

If the taxpayer accepts the MAP outcome, an Agreement of Acceptance of the mutual agreement for the elimination of double taxation is drawn up and signed by the taxpayer and the competent authority. If legal remedies have been lodged before the competent Greek Court, the taxpayer must submit a copy of the written declaration of withdrawal of the case filed before the Court's registry (legal document and right to appeal), pursuant to the provisions of article 143 of the Administrative Procedure Code, before signing the Agreement of Acceptance of the mutual agreement.

If the taxpayer does not accept the MAP outcome, a Rejection Document of the mutual agreement is drawn up. The parties concerned can reject the agreement and have recourse to the national legal remedies that had been suspended. In this case, Greece shall consider that the competent authorities' efforts to resolve the dispute through MAP have been exhausted. Partial acceptance of the MAP outcome by the taxpayer is not possible, except the Contracting States have mutually agreed such a partial acceptance.

### **Duration of the MAP process**

The competent authorities aim to resolve MAP cases as soon as possible, taking into account various factors, such as the complexity of the case, the level of response of the competent authority of the other Contracting State or the timely submission of the required information and documentation by the taxpayer. DTCs that contain arbitration provisions

often determine a time limit for reaching an agreement, which begins to run from the date of the notification of the case to the other Contracting State.

#### **Is it mandatory for the Contracting States to reach a mutual agreement?**

It is not mandatory for the Contracting States to reach a mutual agreement, nor to guarantee elimination of double taxation. Competent authorities are under a duty merely to use their best endeavours to resolve the dispute, without being obliged to reach an agreement within any time limits referred to in the provisions of the applicable DTC.

According to some of the DTCs that Greece has concluded, in cases where the competent authorities are unable to reach an agreement within the time limits referred to in the provisions of the applicable DTC, the unresolved issues will, at the request of the person who presented the case, be solved through an arbitration process. In these cases, Contracting States are obliged to implement an arbitration process once the requisite procedural requirements have been met and the taxpayer's request has been submitted.

#### **Is the mutual agreement binding for the taxpayer?**

In Greece the mutual agreement is binding for the taxpayer only if the taxpayer confirms in writing its acceptance and waives his right to appeal or withdraws any pending appeal regarding the case.

#### **MAP conclusion**

MAP shall be concluded by the issuance of a Mutual Agreement Decision. Based on the Agreement of Acceptance of the mutual agreement the competent authority issues a Mutual Agreement Decision within 30 days from the date the Agreement of Acceptance of the mutual agreement is signed. The Mutual Agreement Decision is signed by the Governor of the Independent Authority for Public Revenue and is communicated along with a copy of the Agreement of Acceptance of the mutual agreement to all the parties involved as well as the tax authority which is competent for its execution. Mutual Agreement Decisions are not subject to appeals or any legal remedy. Mutual Agreement Decisions do not set a precedent for the resolution of subsequent similar cases.

#### **Role and responsibilities of the taxpayer**

Given the nature of MAP as a procedure of public international law, the competent authorities of the States are the sole parties involved in the consultation process, **and not the taxpayer**. The taxpayer is not an official part of the consultation process, although he may be invited to participate informally, which is at the discretion of the competent authority. The taxpayer is not informed of the documents sent between the competent authorities, but he is informed about the progress of his case by the competent authority.

However, the taxpayer has a central role in ensuring a better understanding of the case and increased transparency. To this end, he is obliged to cooperate fully with the competent authority by providing complete and accurate information as well as the relevant documentation. In addition, the timely submission of the information required is necessary

in order for the competent authority to be able to resolve the dispute in a fair and swift manner.

#### **Confidentiality during the MAP process**

The exchange of information for the purposes of a MAP is carried out in accordance with the provisions regarding the exchange of information of the applicable DTC as well as with the domestic law provisions on professional and tax secrecy.

#### **Publication of the Mutual Agreement Decisions**

The exchange of information for the purposes of a MAP is carried out in accordance with the provisions regarding the exchange of information of the applicable DTC as well as with the domestic law provisions on professional and tax secrecy.

Mutual Agreement Decisions are published at the website of the Independent Authority for Public Revenue following anonymisation of the taxpayer's data. If the taxpayer disagrees with the publication of the Decision, a summary of the Decision is published, which includes a description of the issue, the other Contracting State, the tax years concerned and its legal base.

#### **Are tax collection procedures suspended during the period a MAP case is pending?**

No, there is no suspension of tax collection during the MAP process.

#### **Implementation of the mutual agreement**

The Contracting States may implement any agreement reached notwithstanding any time limits in their domestic laws. However, this provision does not prevent the States that are not able to overrule the time limits in the domestic law from inserting in the mutual agreement itself time limits adapted to their internal statute of limitation. According to the provisions of some DTCs that Greece has concluded, any agreement reached shall be implemented within the time period prescribed in our domestic law.