

Mutual Agreement Procedure Guideline

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1. Mutual Agreement Procedure

Mutual Agreement Procedure (“MAP”) is governed by the provisions of the OECD Model Tax Convention under Article 25 and the UN Model Tax Convention under Article 25. It is a tool that allows designated representatives from the contracting states to engage in resolving international tax disputes which involve cases of double taxation (juridical and economic) as well as inconsistencies in the interpretation and application of an Avoidance of Double Taxation Agreement (“DTA”) (or an Avoidance of Double Taxation Convention, as the case may be).

MAP is carried out directly between the competent authorities of both Contracting States and the competent authorities should endeavor to resolve any difficulties or doubts arising as to the interpretation or application of the respective DTA but they are not obliged to achieve a result in eliminating double taxation.

The purpose of this guideline is to provide guidance on MAP, which can be initiated when the actions of one or both Contracting States have resulted or will result in taxation not in accordance with the provisions of the respective DTA.

2. Objective of MAP

To avoid or resolve any potential disputes, or problems of double taxation caused by the actions of one or both of the Contracting States which result or will result in taxation not in accordance with the provisions of the respective DTA.

3. Persons eligible to request the initiation of a MAP

A taxpayer who is a resident of Thailand, as defined by the DTA, is eligible to request a MAP to the Thai competent authority when he considers that the action of one or both Contracting States result or will result in taxation not in accordance with the respective DTA provisions. Therefore, the Revenue Department will only accept a MAP request submitted by the Thai resident.

4. Competent authority

In the case of Thailand, the Minister of Finance has authorized the Director - General of the Revenue Department to be the competent authority under the DTA.

5. Initiating a MAP

A taxpayer may request the initiation of the procedure, to present its position on the case, and to make comments on the relevant facts and legal issues relating to the procedure itself and to the outcome thereof, in writing. The Revenue Department then initiates a MAP with the competent authority of the Contracting State in which the respective DTA is in effect. The request to initiate a MAP may be made irrespective of the legal remedies available under the national laws of the States. The initiation of a MAP may be requested, even if, following an audit, the taxpayer accepts taxation and does not appeal the tax assessment notice.

6. Form and content of the taxpayer's request

The request to initiate a MAP must be submitted by the taxpayer in writing and in Thai language. There is no specific template or form for the submission of the request. The request should be accompanied by all relevant documents and information on the case.

The request shall contain the following information:

- Identification and contact details of the person that submits the request (name, address, tax number);
- Identification of other persons concerned by the request;
- Power of attorney, if lodged by an authorized person;
- The other country/countries concerned;
- Detailed information about the facts and circumstances of the case (including the amount of tax covered by the request in THB and the other foreign currency; details about the relationships between the taxpayer submitting the request and the other persons directly involved; annual financial statements for the fiscal periods to which it refers, where applicable);
- The periods for which double taxation or taxation not in accordance with the provisions of a respective DTA has occurred;
- Detailed information of the actions whereby double taxation or taxation not in accordance with the provisions of the respective DTA occurs or will occur, if any. Examples of such documents are tax assessment report and unilateral ruling;
- The analysis and the supporting reasons for which the person considers that one or both of the Contracting States' actions result or would result in taxation which is not in accordance with the provisions of the respective DTA;
- Detailed information on any action taken to avoid double taxation in Thailand or in the other State (correspondence with the tax authorities, objections, etc.);
- Detailed information on any remedy sought in Thailand or in the other State, if used;

- Information on whether a request for a MAP was also submitted to the competent authority of the other State

- Statement confirming the accuracy and completeness of all information and documents in the MAP request and that the taxpayer will assist the competent authority by providing any other information or documents requested by the competent authority. The taxpayer has to clarify all facts and circumstances relevant to the case, provide evidence, if necessary, and provide all relevant data required for the conduct of the MAP.

- Where applicable, evidence that the matter in question, in connection with which the request for the initiation of the MAP has been made, has been addressed in an advance tax ruling, advance pricing arrangement or judgment as well as copies of the relevant decisions;

- Any other information that would help resolve the case;

- If possible, copies of the information and documentation submitted should also be supplied in electronic format.

For the purpose of resolving a MAP case, the taxpayer may have to provide some of the above documents in English, if necessary.

7. Place and time limit for submitting the request

The request to initiate the MAP must be submitted in Thai to the Revenue Department of Thailand, addressing the Director - General.

The address is as follows:

The Revenue Department

90 Soi Phaholyothin 7, Phaholyothin Road, Phayathai, Bangkok 10400

The request must be submitted to the Revenue Department within time limit (as specified in the respective DTA such as 2 years or 3 years) from the first notification of the action resulting in taxation that is not in accordance with the provisions of the respective DTA. The time limit (such as 2 years or 3 years), however, starts from the moment the Revenue Department or the foreign administration has materialized its taxation intention into a tax notice, tax or audit report, or any other act issued in accordance with its legislation and has informed the taxpayer thereof under the procedure provided for in its law.

8. Eligibility of the request to initiate a MAP

The competent authority verifies whether the request is eligible and the taxpayer's objections are justified before initiating a MAP.

The request made by the taxpayer is eligible when all of the following requirements are met.

- (1) the request has been made by an authorized person;
- (2) the request has been submitted to the relevant competent authority;
- (3) the request has been submitted within the time limit stated in the respective DTA;
- (4) the request has been submitted for (a) fiscal period(s) for which the respective DTA was in force.

The taxpayer's objection is justified when all of the following requirements are met.

- (1) the taxpayer has provided the adequate information to allow the competent authority to assess whether taxation in one or both states is contrary to the provisions of the respective DTA;
- (2) the taxpayer's request concerns matters relating to the application or interpretation of the provisions of the respective DTA;
- (3) the taxpayer has managed to justify his position based on the evidence presented that taxation not in accordance with the provisions of the respective DTA has occurred or will occur.

9. Processing a MAP

The competent authority initiates a MAP when all of the following conditions are met:

- (1) the request made by the taxpayer is eligible;
- (2) the objection of the taxpayer is justified;
- (3) the competent authority cannot unilaterally remove taxation that is not in accordance with the respective DTA.

The competent authority informs the taxpayer of the unilateral actions, if any, taken to eliminate the taxation, which is not in accordance with the provisions of the respective DTA or of the launching of a MAP with the competent authority of the Contracting State. The Revenue Department conducts a MAP directly with the competent authority of the Contracting State concerned and the correspondence between the competent authorities of both countries is confidential and not shared with the taxpayer.

In the case where the MAP process is initiated by the competent authority of the Contracting State, the Revenue Department examines the request to initiate the procedure to verify if the requirements for its initiation have been met. After this verification, the Revenue Department informs the competent authority of the Contracting State of Thailand's position on the matter in writing, as soon as possible.

The dispute between the two Contracting States may be handled either by means of correspondence or through (a) meeting(s) between representatives of the competent authorities of the two Contracting States. During the procedure, both Contracting States defend their positions with a view to reach an agreement on the dispute.

For the purpose of resolving a MAP case, all information collected by the competent authorities is subject to the rules on confidentiality as laid down in the provisions on exchange of information provided for in the respective DTA.

10. Implementation of the agreement reached under a MAP

A MAP is conducted and completed in writing, by means of an exchange of positions, and a final confirmation of the agreement reached by the Revenue Department and the Contracting State concerned.

The competent authority informs the taxpayer of the outcome of the procedure and the actions to take, as soon as it is completed.

The taxpayer must have stated in writing that he accepts the agreement reached and its implementation and that he has terminated all initiated legal procedures and that he will refrain from taking any subsequent legal action for the agreement to be implemented.

If the competent authorities cannot reach an agreement, the procedure will not be successful. In such a case, the taxpayer concerned will be informed that no agreement has been reached.

11. A MAP and domestic remedies

The taxpayer can submit a MAP request irrespective of the domestic remedies provided by the internal legislations of both Contracting States. The submission of such request does not preclude the opportunity for the person to benefit from any other legal remedies, e.g. appeal against acts and actions of the tax administrations, which the two Contracting States domestic laws provide in order to ensure protection against unlawful income taxation.

In Thailand's case, the above applies only to the administrative appeal of acts and actions of the Revenue Department. In Thailand, court decisions are binding and the Revenue Department cannot reach an agreement with the tax administration of the Contracting State on taxation that is not in accordance with the decision if the court decisions have already entered into force, even where such taxation is more favorable to the taxpayer.

The fact that the court has ruled on the case to which the application relates, does not itself prevent the initiation of a MAP. However, for the above reasons, the Thai competent authority cannot hold a different position and apply an agreement, which deviates from the Thai court decision that has entered into force.

12. Contact point

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