

# **MUTUAL AGREEMENT PROCEDURE ("MAP") GUIDANCE NOTE**



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## **Preface:**

A mutual agreement procedure (“MAP”) is usually included in a Double Taxation Agreement (“DTA”) to provide a mechanism aimed at resolving cases where taxpayers believe that they have not been dealt with correctly under the terms of the DTA by one, or both, of the contracting jurisdictions. The MAP procedure is outlined in a specific article of the DTA and allows for the competent authorities of the respect jurisdiction to discuss a case and requires them to reach a satisfactory solution.

This guidance note sets out the MAP procedure in the British Virgin Islands (“hereinafter the BVI”). In the BVI, the ITA is the Competent Authority to address MAP.

## **1. Basis for MAP procedure**

All but two of the BVI’s tax treaties include a provision relating to mutual agreement procedure. The BVI tax treaties are accessible [here](#).

## **2. All MAP request should be made in writing addressed as follows:**

La Toya James

Director of the International Tax Authority

International Tax Authority

Pickering Drive

Road Town, Tortola

British Virgin Islands, VG 1110

## **3. Making a MAP Request:**

MAP requests will only be accepted if:

- The issue or transaction relates to a jurisdiction with which BVI has a DTA with a MAP Article;
- It is apparent that the actions of one or both jurisdictions resulted in or will result in taxation not in accordance with the DTA; and
- The taxpayer notifies the competent authority within the time limits specified in the applicable DTA.

Therefore, any person that is a resident of the BVI and believe that they are not being taxed in accordance with the provisions of the DTA, may; irrespective of the remedies provided by BVI’s legislation, present a case to ITA for assistance.

If a MAP request is validly made and is considered to be justified and is not a matter that the ITA alone, can resolve, the ITA will discuss the case with the Competent Authority of the other jurisdiction and try to resolve it in accordance with the relevant DTA. If the ITA does not think that the request is valid or justified, it will explain to the taxpayer why this conclusion has been drawn. The taxpayer will then be given an opportunity for clarifying any misunderstandings which may have led to the conclusion of the ITA, if appropriate.

Since MAP is a right granted to taxpayers that are eligible under a tax treaty or an Agreement, the obligations placed on the BVI under the treaty or Agreement will require access to MAP in all eligible cases. The examples of the cases that should be given access to MAP are:

- (a) Transfer pricing cases.
- (b) Cases concerning the application of treaty and domestic anti-abuse provisions.
- (c) Bona fide foreign initiated self-adjustments.

#### **4. Role of the taxpayer**

The taxpayer is not a formal participant to the MAP process but may be invited to participate informally at the discretion of both competent authorities. While the taxpayer initiates the MAP process by making a request, the BVI advises the taxpayer of the progress. The taxpayer is not permitted to attend MAP negotiations.

The taxpayer may present arguments in support of his case to both competent authorities involved, if both Parties agree to it. If they do not agree, the BVI will give the taxpayer an opportunity to present his arguments to the ITA.

#### **5. Steps of a MAP request:**

- The taxpayer submits a MAP request.
- The ITA will consider the request and ask the taxpayer for further information in writing, if required.
- Initiating a MAP consultation between the BVI and its treaty partner.
- Agreement reached between BVI and its treaty partner.
- Implementation of mutual agreement reached.

#### **I. Minimum requirements for a MAP request (where applicable):**

A MAP request should comply with the following minimum information requirements in order for ITA to process the request:

- Identity of the taxpayer(s) covered in the MAP request, including the parties involved and tax reference(s) of those involved (the tax reference must be included for both jurisdictions).
- The basis for the MAP request.
- Facts of the case.
- Analysis of the issue(s) requested to be resolved via MAP.
- The DTA article(s) that is believed to not have been correctly applied and the reasons why.
- The relevant taxation period involved.
- Whether the MAP request was also submitted to the competent authority of the other treaty partner.
- Whether the MAP request was also submitted to another authority under another instrument that provides for a mechanism to resolve treaty-related disputes.
- Whether the issue(s) involved were dealt with/considered previously in anyway.
- For transfer pricing cases, the name, address and, if possible, the taxpayer identification number of any related foreign taxpayers and copies of relevant documentation.
- A statement confirming that all information and documentation provided in the MAP request is accurate and that the taxpayer will assist the competent authority in its resolution of the issue(s) presented in the MAP request by furnishing any other information or documentation required by the competent authority in a timely manner.

## II. Processing timeline for MAP Request

The ITA will then follow the following time limits. Time limits may be extended or shortened depending upon the facts and circumstances of a particular case.

| No. | Action  | Time limit  |
|-----|---|---|
| 1   | The ITA will notify the taxpayer of receiving the request.                      | <b>Within one (1) month of the taxpayer initiating the MAP request.</b> |
| 2.  | The ITA will notify the foreign competent authority involved about the request. | <b>Within one (1) month of the taxpayer initiating the MAP request.</b> |

|     |  |   |
|-----|--|---|
| 3.  | Further information/documentation required/requested from taxpayer (if necessary)  | <b>Within 10 days but not to exceed 30 days to provide requested documentation/information, from the date of receipt of the request for further information by the taxpayer.</b>  |
| 4.  | ITA will determine the eligibility of the MAP request  | <b>Notification to the taxpayer of the status (rejected/accepted) will be within 30 days after the receipt of the additional information/documentation.</b>   |
| 5.  | The ITA will notify the taxpayer, in writing setting out its reasons, if the case is accepted or rejected  | <b>The ITA will notify the CA on the status of the request (rejected/Accepted) within 30days of receipt of the additional information/documentation.</b>  |
| 6.  | Evaluation and consultation process between both competent authorities.  | <b>The consultation process may be carried out within six (6) – twelve (12) months.</b>   |
| 7.  | Agreement between the ITA and the foreign competent authority is arrived – To inform the taxpayer.   | <b>The ITA will write to the taxpayer, within 30 days of reaching a mutual agreement and advise the taxpayer on the next course of action. The taxpayer will have to decide whether the agreed outcome is acceptable.</b> |
| 8.  | Once the taxpayers agree to the mutual agreement reached between the ITA and the foreign competent authority, the taxpayer must inform the ITA in writing of such. | <b>The taxpayer must respond to the ITA in writing within 30 days from the date of receiving notice from the ITA of the mutual agreement reached by the ITA and the CA</b>  |
| 9.  | Confirmation of mutual agreement with terms and conditions: exchange of closing letters to the taxpayer and competent authority.                                   | <b>As soon as possible after acceptance of the mutual agreement by the taxpayer</b>   |
| 10. | Implementation of the mutual agreement   | <b>Within 90 days after confirmation of receipt of closing letters by the taxpayer and foreign competent authority, whichever is later.</b>   |

## 6. Process overview

Once a MAP application is accepted by the ITA, the ITA shall correspond with the competent authority of the relevant treaty partner about such acceptance through a written communication (notification or invocation letter).

If a MAP application is found to be not acceptable by the ITA, it shall write to the competent authority of the relevant treaty partner informing it about the reasons for which the MAP application cannot be accepted and request the latter to send its views/comments on the same (notification and bilateral consultation). Once the

competent authorities of both treaty partners have exchanged views and come to a common understanding, the decision on the MAP application shall be communicated by the ITA to the taxpayer who had made the MAP application.

If both competent authorities successfully resolve a MAP case, a mutual agreement would be formalized at the earliest possible time. The ITA would inform the BVI taxpayer who had applied for MAP, about the terms and conditions of the resolution.

An acceptance or rejection of the MAP resolution is the prerogative of the taxpayer but in either situation, the MAP case would be closed by both competent authorities and considered resolved.

If both competent authorities were unable to resolve a MAP case, they would close the MAP case as unresolved. The CA of the BVI having jurisdiction over the case shall inform the BVI taxpayer about the non-resolution of the dispute.

## **7. Timeframe for Resolving and Implementing MAP cases.**

MAP cases, not in accordance with the Convention should be presented to the competent authority of the taxpayer's residence country **within two years** from the first notification of the action resulting in taxation. A taxpayer who does not meet this timeline for presenting a case to the ITA, the MAP request may be declined. However, due to the objectives of the convention, there will be no undue denial of a taxpayer to obtaining assistance via the MAP procedure taking into consideration the specific case at hand. A MAP case may vary depending on the nature and circumstances of a case however the two-year timeline from the date of acceptance of the taxpayer's request is the timeframe the ITA endeavours to meet for the completion of a MAP case.

During the review process of a MAP case, the ITA will provide periodic status updates to the competent authority party. Such communication are to be mutually agreed by both parties. The frequency of such periodic updates may be no less than every three 3 months.

It may be the case that some MAP cases may require more than 2 years to be resolved. If a MAP case is not resolved within the two (2) year timeframe, the time may be extended by mutual agreement between both competent authorities.

## **8. MAP Arbitration Mechanism**

The BVI has not incorporated an arbitration clause in any of its tax treaties, but it may be possible to reach an agreement through arbitration as there are no limitations in domestic law that would prevent arbitration.

## **9. Withdrawal of a MAP request**



A taxpayer can withdraw a MAP request made to the ITA at any time. In the event a taxpayer wishes to withdraw a request, notification should be provided in writing as soon as possible after this decision has been made by the taxpayer. Where negotiations have already commenced with the Competent Authority of a treaty partner, the ITA will notify them that the MAP request has been withdrawn at the request of the taxpayer. The taxpayer will also be sent an acknowledgment that the MAP has been terminated, at their request.

## **10. Consultation Process**

The ITA will not unreasonably withhold access to MAP in cases where the relevant DTA does not contain a consultative process equivalent to 25(3) of the OECD Model Tax Convention.

## **11. Important Information**

If you have a professional service provider who assists you in tax matters, such as an accountant, lawyer, or tax adviser, you may wish to consult with them before making a MAP request. They may suggest that they make the request and handle the matter on your behalf<sup>1</sup>. Whether you wish to do that is a decision for you. You are not required to be professionally represented to make a MAP request.

There is no charge or fee imposed by the ITA for dealing with a MAP request on your behalf.

A MAP request that spans multiple tax years may be submitted. It should, however, be noted that only year(s) that fall within the time limits detailed in the relevant DTA or this guidance note will be considered by the ITA.

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<sup>1</sup> See paragraph 4 above.