



GUIDELINES ON THE MUTUAL AGREEMENT PROCEDURE ("MAP") ASSISTANCE IN OMAN

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Tax Authority: The information in this document is provided as a guide only and is not legal advice. It should not be assumed that the guidance is comprehensive or that it provides a definitive answer in every case.

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The Sultanate of Oman Competent Authority:

The purpose of this document is to set out the process through which taxpayers can request assistance from the Competent Authority in Oman to resolve disputes arising from taxation not in accordance with the provisions of the relevant double taxation agreement ("DTA"). In Oman, the Tax Authority is the Competent Authority. All Competent Authority matters such as Exchange of Information on Request (EOIR), application for Certificates of Residence for Tax Purposes (COR) and Mutual Agreement Procedure (MAP) are dealt with by International Cooperation Department (ICD) at the Tax Authority. All EOIR, COR, and MAP requests may be sent by mail, e-fax or email in either Arabic or English to:

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Overview:

The purpose of this Guide is to:

- Provide the tax information that taxpayers must take into account when submitting the assistance request in regards to MAP.
- It must be taken into account that any mutual agreement does not represent a precedent or a case such as binding on the competent Omani authority, and therefore it is not permissible to seek guidance in any other cases.

Definition of MAP:

Mutual Agreement Procedure ("MAP") is a dispute resolution facility provided under the MAP article in the Avoidance of Double Taxation Agreements ("DTAs"). The Tax Authority and the relevant foreign competent authority ("CA") resolve disputes regarding double taxation issues through this procedure.

Usually, a MAP is entered into between two CAs, but it is also possible for Tax Authority to enter into a multilateral MAP involving three or more CAs.

Legal basis for a MAP request:

Article 25 of the OECD's Model Tax Convention on Income and on Capital ("MTC") provides a mechanism to resolve difficulties arising where the actions of one or both of the Contracting States result or will result for the taxpayer concerned in taxation, not in accordance with the provisions of the convention. Under the equivalent of Article 25(2) of the MTC, within the relevant Oman's DTA, the Tax Authority will endeavor to resolve such cases by mutual agreement with the Competent Authority of the other Contracting State. In such a case, a taxpayer may request assistance from the Competent Authority to resolve the issue.

Generally, Oman's DTAs state that taxpayers must approach the Competent Authority of their country of residence to request MAP assistance. In cases where an adjustment to profits is made by a tax administration that affects related parties in different jurisdictions, it is advisable for each taxpayer to make a separate request for MAP assistance to the Competent Authority of the country in which it is resident.

The MLI signed on 26 November 2019. One of the provisions of the MLI, which Oman has adopted, allows taxpayers to approach the Competent Authority of either jurisdiction to request MAP assistance under a DTA. The new rule will only apply, however, in treaties where Oman's treaty

partner has also adopted the provision and ratified the MLI. Where both countries have elected to apply the new rule, taxpayers will be able to approach the Competent Authority of either treaty partner jurisdiction in order to request MAP assistance. Taxpayers should consult the relevant DTA and the relevant MLI provisions (following ratification by both treaty partners) when making a MAP request.

Making a MAP request:

In order to make a valid MAP assistance request, a taxpayer must submit the MAP request in writing to the relevant Competent Authority, providing the required information as below, of the action that has resulted or will result in taxation, not in accordance with the relevant DTA.

The time limit for requesting a MAP:

The time limit for submitting a request for MAP assistance under a DTA is determined by the relevant DTA. Generally, Oman's DTAs follow Article 25 of the MTC and provide that a request for MAP assistance must be submitted within 3 years from the first notification of the action resulting in taxation not in accordance with the convention. However, some treaties provide for a different time.

Therefore, taxpayers should always consult the relevant DTA and the relevant MLI provisions (following ratification by both treaty partners) at an early stage to ensure that they submit a request for MAP assistance within the specified time limit.

Where the time limit specified in a DTA has not been met, a request for MAP assistance will not be accepted. The Tax Authority considers the date on which the taxpayer receives the first tax assessment notice or equivalent that results in double taxation as being the beginning of the 3-year period.

Start date/initiation of a MAP request:

The receipt of the information outlined in Appendix 1 will determine the start date for a MAP request under a DTA. This start date is relevant for the purposes of computing the time taken to resolve a MAP request.

Minimum information required for a MAP request (where applicable):

Requests need to comply with the following minimum information requirements in order for Tax Authority to process a request:

- The tax period(s) concerned;
- The nature of the action giving rise, or expected to give rise, to taxation not in accordance with the DTA; and
- The full names and addresses of the parties to which the MAP relates.

The taxpayer must also undertake to respond as completely and quickly as possible to requests by the Competent Authority for further information. Where the MAP request, which does not contain this minimum amount of information, the Tax Authority will not regard it as a MAP request.

Complete MAP request:

The Tax Authority will not commence the MAP process until a complete request for MAP assistance is received. In order for a MAP request to be considered complete, taxpayers must provide the relevant information outlined in Appendix 1.

Analysis of a MAP request and taxpayer role:

As the Tax Authority begins the detailed analysis of the MAP request, it is likely that there will be further information requests.

Taxpayers are expected to cooperate fully with the Tax Authority by providing complete and accurate information without delay when requested. Without proper information and documentation, the Tax Authority may be unable to resolve disputes.

Throughout the MAP process, the taxpayer should ensure that each tax administration is provided with the same information at the same time. This applies to any information submitted by the taxpayer to either tax administration as part of the MAP process. The Tax Authority will keep the taxpayer informed of the status of their MAP request on an on-going basis.

Confidentiality:

The information submitted to the Tax Authority in connection with a MAP request will be treated as confidential in accordance with the provisions of the Income Tax Law of 2009. The exchange of information between the Tax Authority and the Competent Authority of the treaty partner country in relation to a MAP shall be carried out in accordance with the provisions of the relevant DTA. Information exchanged under Oman's DTAs is confidential and may only be used and disclosed in accordance with the provisions of the treaty.

Factors for accepting a MAP request:

The factors, which the Tax Authority will consider in determining whether to accept requests for MAP assistance, include:

- There is a DTA in place between Oman and the foreign jurisdiction which contains the appropriate enabling provision; and
- The actions of one or both countries result or may result in taxation not in accordance with the provisions;

- The Competent Authority receives a valid MAP request within the time limit specified in the applicable DTA (as above); and
- The issue or objection raised by the taxpayer appears to be justified.

The Tax Authority will notify the taxpayer in writing, where possible, within 30 days of receipt of the taxpayer's MAP request, whether their request has been accepted or ~~rejected~~. The Tax Authority will provide the taxpayer with the reasons for its decision where a request is rejected.

Stages of the MAP Process:

First stage – unilateral

The Omani Competent Authority will, if the request appears to be justified as per the above-mentioned rules, attempt to resolve the matter unilaterally, without consulting the other Competent Authority.

If the Omani Competent Authority is not itself able to arrive at a satisfactory solution due to a tax being imposed partially or completely by the other jurisdiction, it will contact the CA of the other jurisdiction to set in motion the second bilateral stage of the MAP process.

Second stage – bilateral

During the second, bilateral stage of the MAP process, the Omani Competent Authority will endeavor to resolve the matter by mutual agreement with the Competent Authority of the other jurisdiction involved.

It is important to note that paragraph 2 of Article 25 of the MTC requires both Competent Authorities to negotiate with a view to the avoidance of double taxation. However, there is no guarantee that the case will be successfully resolved.

Interaction with domestic remedies:

A taxpayer may request MAP assistance irrespective of the remedies provided by Oman's domestic law.

The taxpayer may submit a request for MAP assistance while judicial proceedings are ongoing. In such cases, the Competent Authority will generally request that the taxpayer agrees to the suspension of its judicial remedies pending the outcome of the MAP. If the taxpayer does not agree to suspend the judicial remedies, the Competent Authority will delay the MAP process pending the outcome of the judicial proceedings.

The taxpayer may pursue any available domestic administrative or judicial remedies. However, the Tax Authority considers that it is legally bound to follow a final court decision and will not deviate from a domestic court decision.

Other relevant guidance:

Collections, interest and penalties- Under Oman domestic legislation, there is no suspension of tax collection during the MAP process. However, tax collection may be suspended where, separately, the taxpayer has appealed against an assessment and has paid the undisputed amount of tax. Where applicable, interest and penalties will apply in accordance with the Income Tax Law.

Taxpayer- initiated adjustments- Access to MAP will be available for issues arising from a bona fide taxpayer-initiated adjustment.

Treaty anti- abuse and domestic anti-abuse provisions- Where issues arise relating to the application of treaty anti-abuse provisions or the application of domestic anti- abuse provisions, Oman will engage in consultation with the Competent Authority of the other Contracting State.

Multiple years- Taxpayers may submit MAP requests that span multiple years, subject to the time limit in the relevant DTA.

Multilateral MAPs- Where a MAP issue involves more than two tax jurisdictions, the Tax Authority will consider entering into a series of bilateral MAPs as a way of dealing with such multilateral situations. The Tax Authority will also consider requests by the taxpayer to conduct multilateral meetings with the other tax administrations, subject to the terms of the relevant DTAs and the agreement of the other tax administrations.

Absence of Article 9(2) in a DTA- Economic double taxation can arise because of the inclusion in the profits of an enterprise of one Contracting State, profits on which an enterprise of the other Contracting State has been charged to tax in that other State, under the equivalent of Article 9(1) of the MTC. Article 9(2) of the MTC provides for a corresponding adjustment to be made to relieve the economic double taxation that could otherwise arise. Where a DTA does not include the equivalent of Article 9(2) of the MTC, the Tax Authority regards such economic double taxation as being implicitly within the scope of the DTA by virtue of the inclusion of Article 9(1) and accordingly, the Tax Authority is willing to consider a request in such cases for MAP.

Items not covered by MAP:

- Interest and penalties imposed by the other country; and
- Secondary/repatriation of profits adjustments implemented under the laws of the other country.

Resolution of a MAP request:

There are a number of potential outcomes in a MAP case, including:

- unilateral resolve by the local CA;
- Competent Authority agreement for full or partial elimination of double taxation or rejecting the request;
- No Competent Authority agreement is reached;
- MAP request withdrawn by the taxpayer.

In line with BEPS Action 14, the Tax Authority is committed to seeking to resolve MAP cases within an average timeframe of 24 months of receipt of the complete MAP request. However, this depends on a number of factors such as the complexity of the case, the co-operation of the taxpayer and the number of rounds of negotiations required. It is expected that the taxpayer will furnish all additional requested documents within 45 days of the request.

Competent Authority agreement has been reached:

Once a mutual agreement has been reached between the Tax Authority and the other Competent Authority, the Tax Authority will notify the taxpayer in writing of the agreed outcome, where possible within 30 days of the Competent Authority meeting. The Tax Authority will request that the taxpayer confirm in writing whether they accept the mutual agreement within 30 days of receipt of the letter from the Tax Authority.

If the taxpayer rejects the mutual agreement reached between the Competent Authorities, it can withdraw from the MAP process and pursue any available domestic remedies.

In this event, the period from the date of submitting the application until the expiry of the deadline for responding by accepting or rejecting the agreement reached is a suspension period for the legal deadlines for tax disputes in accordance with local laws.

Implementing agreement:

If the taxpayer confirms in writing their acceptance of the mutual agreement, the Tax Authority will give effect to the mutual agreement and seek to ensure its implementation without delay. In cases where a refund is due to the taxpayer, the taxpayer will be required to submit revised tax computations for the affected accounting periods to the Tax Authority.

Whereas tax shall not be refunded, except after deducting any tax amount due on the taxpayer for any other tax year.

Competent Authority agreement has not been reached:

In the event that the Tax Authority is unable to reach agreement with the Competent Authority of the foreign tax administration, the Tax Authority will notify the taxpayer in writing, where possible within 30 days of the Competent Authority meeting, setting out why agreement could not be reached.

MAP request withdrawn by the taxpayer:

Where a taxpayer wishes to withdraw a MAP request the taxpayer is required to provide the Competent Authority (to which it submitted the MAP request) with a notification, in writing, of the withdrawal of its MAP request, without delay within a period not exceeding (15) days if the case is resolved by any means. This notification should include the reason for the withdrawal (for example resolution of the issue through remedies provided by the domestic law of a Contracting State).

Appendix 1: Information and documentation required to be submitted with a request for MAP assistance:

Information and documentation submitted with a request for MAP assistance should be provided in Arabic or English. The information that must be included with a request for a MAP presented under either a DTA is set out below:

1. Identity (such as name, address, tax identification number or birth date, contact details) of the taxpayer(s) covered in the MAP request and of the other parties to the relevant transaction(s).
2. Details of the relationship between the taxpayer and the other parties to the relevant transaction(s).
3. The legal basis for the request i.e. the specific tax treaty including the provision(s) of the specific article(s) which the taxpayer considers is not being correctly applied by either one or both Contracting States (and to indicate which state and the contact details of the relevant person(s) in that state).
4. Facts and circumstances of the case (including any documentation to support these facts such as financial statements and intercompany legal agreements, the taxation year(s) or period(s) involved and the amounts involved, in both the local currency and foreign currency).
5. An analysis of the issues involved (supported with relevant documentation, for example, tax assessment notices, tax audit report or equivalent leading to the alleged double taxation, evidence of tax paid (where applicable)), including:
 - a) the taxpayers interpretation of the application of the specific treaty provisions(s), to support its basis for making a claim that the provision of the specific tax treaty is not correctly applied by either one or both Contracting States.

6. The request should state whether the issue(s) presented in the MAP request have been previously dealt with, for example, in an advance ruling, settlement agreement or by the Income Tax Committee or court. This includes details of any appeals and litigation procedures initiated by the taxpayer or the other parties to the relevant transactions. If yes, a copy of these rulings, agreements or any court decisions concerning the case should be provided.
7. Any other information or documentation requested by the Competent Authority. Responses to requests for additional information should be complete and submitted within the time stipulated in the request for such information or documentation.
8. An undertaking that the enterprise shall respond as completely and quickly as possible, providing wholly accurate and complete information, to all reasonable and appropriate requests made by a Competent Authority and have documentation at the disposal of the Competent Authorities.

Confirmation of whether the MAP request was also submitted to the Competent Authority of the other Contracting State — if so, the MAP request should make this clear, together with the date of such submission, the name and the designation of the person or the office to which the MAP request was submitted. A copy of that submission (including all documentation filed with that submission) should also be provided unless the content of both MAP submissions are the same.