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**Committee of Experts on International Cooperation in Tax Matters**

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**Dispute resolution**

**NOTE ON DISPUTE RESOLUTION: GUIDE TO MUTUAL AGREEMENT PROCEDURE**

*Summary*

This note has been prepared by the Subcommittee on Dispute Resolution, in accordance with the mandate given to that Subcommittee by the Fifth Session of the Committee of Experts on International Cooperation in Tax Matters in the report of its meeting in Geneva from 19 to 23 October 2009. The mandate of the Subcommittee on Services is as follows:

“The Subcommittee is mandated to consider:

a) Different possible ways to improve the mutual agreement procedure (including advance pricing agreements, mediation, conciliation, recommended administrative regulations and prescribed obligations for the taxpayer applying for mutual agreement procedure).

.....

c) Possible specific problems and needs with respect to transfer pricing dispute resolution.

In doing so, the Subcommittee shall primarily focus on the specific needs and concerns of developing countries and countries in transition. The Subcommittee shall present a report, with draft provisions and Commentaries annexed, during the next annual session of the Committee for consideration and further guidance.”

This paper proposes a Guide to the Mutual Agreement Procedure under Tax Treaties. The paper is marked up to show differences to earlier drafts.

## GUIDE TO THE MUTUAL AGREEMENT PROCEDURE UNDER TAX TREATIES

At its meeting of 19-23 October 2009, the UN Committee of Experts on International Cooperation in Tax Matters mandated its Subcommittee on Dispute Resolution “to consider ... [d]ifferent possible ways to improve the mutual agreement procedure (including advance pricing agreements, mediation, conciliation, recommended administrative regulations and prescribed obligations for the taxpayer applying for mutual agreement procedure).” The

## PREFACE

1. The main purpose of this Guide is to improve the understanding and functioning of the Mutual Agreement Procedure (“MAP”), which is the procedure, provided for in Article 25<sup>1</sup> of the United Nations Model Double Taxation Convention between Developed and Developing Countries (“UN Model”), that allows the representatives of the States that enter into a bilateral tax treaty to resolve disputes, difficulties or doubts arising in relation to the interpretation or application of the treaty.

2. Such improved understanding should facilitate recourse to the MAP, in particular for tax administrations and taxpayers that have limited experience with that procedure, as well as the effective and efficient operation of the MAP.

3. While this Guide builds on other work that has been done in this area,<sup>2</sup> it has been drafted with a primary focus on the specific concerns of developing countries and countries in transition and provides tax administrations and taxpayers with basic information on the MAP and the context in which it operates.

4. This Guide does not purport to propose rules binding upon UN Member countries. It does not modify, restrict, or expand any rights or obligations contained in the provisions of any tax treaty. The information contained in this Guide complements, and should not be considered a substitute for, the guidance found in the UN Model and, in particular, in the Commentary on Article 25 of that Model. To the extent that there are any statements or information in this Guide which are incompatible with the provisions of a tax treaty or with the UN Model, these provisions or the Model will obviously prevail.

5. This Guide includes a number of recommendations. These recommendations are based on international practice and experience and reflect views as to the most appropriate manner to deal with particular MAP processes and procedural issues. Although many tax administrations and taxpayers have found that the implementation of these recommendations has improved the MAP, the appropriateness of these recommendations must be evaluated in light of the specific features and characteristics of each tax system and each treaty.

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<sup>1</sup> Except as otherwise specified, all references to Article 25 in this Guide apply equally with respect to paragraphs 1 through 4 of alternatives A and B.

<sup>2</sup> See, in particular, the OECD’s Manual on Effective Mutual Agreement Procedures (MEMAP), which can be consulted at:  
[http://www.oecd.org/document/26/0,3343,en\\_2649\\_37989739\\_36197402\\_1\\_1\\_1\\_1,00.html](http://www.oecd.org/document/26/0,3343,en_2649_37989739_36197402_1_1_1_1,00.html).

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Agreement Procedure) of the UN Model. Essentially, the negotiation of an agreement pursuant to the MAP is a government-to-government process.

11. The MAP is the mechanism that Contracting States use to resolve any disputes or difficulties that arise in the course of implementing and applying the treaty. The MAP thereby ensures that these disputes will not frustrate the treaty's goal of preventing international double taxation. In order to achieve that goal, the competent authorities should make every effort to reach a timely agreement on each issue submitted to the MAP.

## **1.2 Typical cases dealt with in the MAP**

12. Article 25 of the UN Model sets out two broad areas in which the Contracting States shall endeavour to resolve their differences by mutual agreement:

- (1) cases in which a taxpayer considers that the acts of one or both of the Contracting States result or will result for the taxpayer in taxation not in accordance with the provisions of the treaty (covered by paragraphs 1 and 2 of Article 25); and
- (2) cases in which there are difficulties or doubts as to the interpretation or application of the treaty (covered by paragraph 3 of Article 25).

13. A MAP article will also generally permit the Contracting States to consult together for the elimination of double taxation in cases not provided for in the treaty. The different types of cases that are dealt with in the MAP are briefly discussed below.

### **1.2.1 Article 25(1) cases – taxation not in accordance with the treaty**

14. Paragraph 1 of Article 25 of the UN Model permits a taxpayer who considers that the actions of one or both of the Contracting States result or will result in taxation not in accordance with the provisions of the treaty to present its case to the Contracting State of which it is a resident. A taxpayer's presentation of such a case to the Contracting State of which it is a resident is often referred to as a "request for MAP assistance" or a "request for competent authority assistance".

15. Most disputes that arise under tax treaties involve "taxation not in accordance with the provisions of the Convention". Paragraph 1 is thus the most commonly referred to provision of the MAP article.

16. A Contracting State's taxation of a person or transaction in a manner inconsistent with provisions of a treaty will in most cases result in international double taxation – that is, either (i) the imposition of tax in both Contracting States on the same taxpayer in respect of the same income ("juridical double taxation") or (ii) the imposition of tax in both Contracting States on the same income in the hands of different taxpayers ("economic double taxation").

17. The MAP may not be used to challenge the application of domestic legislation in cases where there is no alleged violation of the provisions of the treaty.

18. Common examples of MAP cases under paragraph 1 include the following cases.



by the treaty: “As a result, most Member countries consider that economic double taxation resulting from adjustments made to profits by reason of transfer pricing is not in accordance with – at least – the spirit of the Convention and falls within the scope of the mutual agreement procedure set up under Article 25.”<sup>5</sup>

*Permanent establishment cases*

26. Under Article 7 (Business Profits) of the UN Model, the business profits of an



38. These issues and questions will often be of a general nature. For example, as discussed below, paragraph 3 of Article 25 may be used to agree on the definition of a specific term used in the treaty, or on procedures to give effect to a specific treaty provision. The resolution reached through the MAP will thus potentially concern a number of taxpayers, rather than solely a specific taxpayer or the parties to a specific transaction (as in a case under paragraph 1 of Article 25).

39. Article 3(2) of the UN Model provides that a term not defined in the treaty will, unless the context requires otherwise, have the meaning that it has under the domestic law of the Contracting State applying the treaty. In some cases, however, a term used in the treaty may not have a precise meaning under a Contracting State's domestic law, or the use of a domestic law meaning may not be appropriate given the context in which the term is used in the treaty. The first sentence of paragraph 3 of Article 25 allows the competent authorities to clarify what meaning should be given to such terms.

40. Some countries have found that the use of the authority provided by Article 25(3) helps the implementation of the provisions of the treaty. In addition, where mutual agreements reached under Article 25(3) apply to all taxpayers or a general category of taxpayers, the publication of such agreements, which are not specific to particular cases and therefore do not mention any taxpayer-specific information, may serve to provide guidance and prevent potential future disputes. Countries are therefore encouraged to follow these practices in order to provide greater guidance in cases that affect a large number of taxpayers.

41. Contracting States may also rely on the first sentence of Article 25(3) to reach agreement on the procedures to be used to apply or otherwise give effect to the treaty. Such agreements could concern, for example, the procedures for confirming a taxpayer's status as a resident of a Contracting State, or the procedures and criteria used to grant treaty benefits to fiscally transparent entities.

42. The second sentence of Article 25(3) provides that the Contracting States may consult together to eliminate double taxation in cases that are not otherwise provided for in the treaty. The most often cited example arises in the case of a third-country resident that has permanent establishments in both of the Contracting States.

43. In such a context, the Contracting States where the permanent establishments are located (State A and State B) may not agree on the amount of the profits attributable to each of the third-country resident's permanent establishments. Such a disagreement

### **1.3 What is a competent authority?**

45. The UN Model uses the term “competent authority” to refer to the person or body within a Contracting State with responsibility for resolving issues that arise in connection with the treaty. Under the terms of Article 25, the competent authority of a Contracting State:

- (1) Accepts taxpayer requests for MAP assistance and endeavours (where it is unable itself to arrive at a satisfactory solution) to resolve these cases by mutual agreement with the competent authority of the other Contracting State;
- (2) Resolves difficulties or doubts as to the interpretation or application of the treaty by mutual agreement with the competent authority of the other Contracting State; and
- (3) May consult with the competent authority of the other Contracting State to eliminate double taxation in cases not covered by the treaty.

46. Other articles of the UN Model also make reference to the competent authorities and specifically provide for competent authority assistance with respect to particular





Such independence may enhance the objectivity of the competent authority and thus its



important that taxpayers be informed as to the potential consequences of pursuing a recourse through one process rather than the other. The information concerning the procedure to be followed and the consequences of pursuing first either the MAP or domestic recourse will typically be explained in a tax administration's general procedures or instructions for requesting MAP assistance, or in other appropriate public guidance. In particular, as noted below, competent authorities that consider that they cannot deviate from a domestic court decision should ensure that taxpayers are informed of that situation in advance.

74. In many countries, it is preferable to pursue the MAP first and suspend the domestic law recourse procedures. A MAP agreement will generally provide a comprehensive bilateral resolution of the taxpayer's case. A domestic recourse procedure, in contrast, will not provide a resolution in both of the States involved, and may therefore fail to relieve international double taxation. If the competent authorities are able to reach agreement through the MAP and the taxpayer is satisfied with the MAP result, the taxpayer will generally have no further need for domestic recourse procedures and these

State A tax administration that increases the income derived by that company from a non-arm's length transaction with a related company in State B. Following that court decision, the competent authority of State A will consider that the only thing that it can do through the MAP is to seek to have State B decrease the income of the State B company by the amount of the adjustment and refund its tax as appropriate.

77. The tax administration of the other Contracting State will not, of course, be bound by the decision of a foreign court. Any relief provided by the other Contracting State in these circumstances will necessarily depend primarily on the underlying merits of the taxpayer's case, not on the fact that domestic law constraints prevent the first Contracting State from providing relief.

78. If a tax authority takes the position that it is legally bound to follow a domestic court decision in the MAP, or that it will not deviate from a domestic court decision as a matter of administrative policy or practice, it should inform taxpayers of this general policy so that they can make an informed choice between the MAP and domestic recourse procedures.

79. Audit settlements and unilateral Advance Pricing Arrangements may create similar issues for the MAP.

80. Audit settlements are a method used by many tax administrations to close audit files through an agreement with the taxpayer. Because they represent the result of a negotiation process, audit settlements will typically involve concessions by both the tax administration and the taxpayer. In order to ensure that an audit settlement represents a final resolution, one of the concessions sometimes sought by tax administrations is to include in its terms a limit on further recourse by the taxpayer, including recourse to the MAP. As a consequence, the tax administration that entered into the settlement may be precluded from resolving through the MAP any double taxation that may result from the settlement. In these circumstances, the domestic law of the other Contracting State may also prevent its tax administration from providing any double tax relief to the taxpayer with respect to the tax paid to the first Contracting State upon settlement of the audit.

81. Taxpayers and tax administrations should avoid the inclusion of a waiver of the right to access the MAP in audit settlements, especially where the case involves an activity or transaction with potential tax consequences in more than one jurisdiction. In such circumstances, it is inappropriate to have two parties (the taxpayer and one tax administration) not include the other involved party (the other tax administration) in the final resolution of the case.

82. Advance Pricing Arrangements (APAs) are a tool used by tax administrations and taxpayers to agree, in advance, on the tax consequences of a transaction or transactions between the taxpayer and a related party in a different tax jurisdiction. A unilateral APA involves only one of the interested tax administrations and, accordingly, the tax consequences of the relevant transaction(s) in only one jurisdiction. A bilateral APA, in contrast, involves the tax administrations of both jurisdictions and is typically concluded through the MAP article of the relevant bilateral tax treaty. It is therefore able to address the full scope of the transaction with certainty and is more useful in addressing cases of double taxation involving two countries.

83. Unilateral APAs may prove useful in certain contexts (for example, to avoid the cost and risk of future transfer pricing disputes). The certainty they provide, however, is

limited, especially if the tax administration of the other jurisdiction would be expected to examine closely the transaction, or type of transaction, at issue. In addition, taxpayers have sometimes found that previously concluded unilateral APAs have precluded them from obtaining relief under the MAP from the country that has granted the APA when they subsequently found themselves subject to double taxation.

84. Like an audit settlement reached in a potential MAP case, a unilateral APA represents a one-sided resolution of issues with tax consequences in two jurisdictions. In order to provide for a bilateral resolution of these issues, where a foreign adjustment is made with respect to a transaction or issue covered by a unilateral APA, it is helpful for the unilateral APA to be treated as the taxpayer's filing position and eligible for MAP, rather than as an irreversible settlement.

## **2. THE MUTUAL AGREEMENT PROCEDURE**

### **2.1 What is a request for MAP assistance?**

85. Under Article 25 of the UN Model, a taxpayer who considers that the actions of one or both of the Contracting States result or will result in taxation not in accordance with the treaty may request the assistance of the competent authority to resolve the case with a view to ensure taxation in accordance with the convention. Such a taxpayer's request is referred to as a request for MAP assistance.

86. A request for MAP assistance is the primary means by which a taxpayer may make a competent authority aware that the actions of one or both of the Contracting States result or will result in taxation not in accordance with the treaty. Requests for MAP assistance are thus at the origin of the large majority of MAP cases.

### **2.2 How does a taxpayer make a MAP request? Format and content**

87. A request for MAP assistance generally<sup>11</sup> must be made to the competent authority of a taxpayer's State of residence (see paragraph 1 of Article 25 of the UN Model).

88. In a context in which an adjustment made by one Contracting State may potentially affect taxpayers in both Contracting States, each of the affected taxpayers may want to make a separate request for MAP assistance to the competent authority of its State of residence. For example, where the State A tax administration makes a transfer pricing adjustment with respect to a related party transaction between a resident of State A and a resident of State B, the State A resident and the State B resident may both wish to request MAP assistance from their respective competent authorities. In such cases, the competent authorities may agree to join the cases.

89. A taxpayer may also make a MAP request to the Contracting State of which it is a national in a case that falls under paragraph 1 of Article 24 (Non-Discrimination) of the UN Model. Under Article 24(1), nationals of a Contracting State may not be subjected in the other Contracting State to taxation or any tax-related requirement which is other or more burdensome than the taxation and tax-related requirements to which nationals of that

<sup>11</sup> As noted in the quotation under paragraph 9 of the Commentary on Article 25, however, States may give taxpayers the option of presenting their cases to the competent authority of either State.



the relevant taxable period, and of any additional facts that come to light after the submission of the MAP request);

7. An analysis of the issues for which competent authority assistance is requested and the relevant legal rules, guidelines or other authorities (including any authorities that may be contrary to the conclusions of the taxpayer's analysis). The analysis should address all specific issues raised by either tax administration as well as the amounts related to the adjustment(s) (in both currencies and supported by calculations, if applicable);
8. For transfer pricing cases, any documentation required to be prepared under the domestic legislation of the taxpayer's State of residence (where the volume of a taxpayer's transfer pricing documentation is large, a competent authority may determine that a description or summary of the relevant documentation is acceptable) and a detailed description of the companies involved, including an analysis of their functions and risks, to the extent relevant;
9. A copy of any other relevant MAP request and the associated documents filed, or to be filed, with the competent authority of the other Contracting State, including copies of correspondence from the other tax administration, copies of briefs, objections, etc., submitted in response to the action or proposed action of the tax administration of the other Contracting State (translations of relevant documents may be helpful, and, where documentation is voluminous, a competent authority may determine that a description or summary of such documentation may be acceptable);





accordance with the treaty. Depending on the characteristics of the particular tax system, a concrete possibility of taxation not in accordance with the treaty might be considered to exist, for example, when a taxpayer receives a final notice of adjustment or assessment, or where an adjustment is sustained in an administrative (non-judicial) appeals procedure.

110. In any case, regardless of the point at which the competent authority determines it is appropriate for a taxpayer to invoke the MAP, a tax administration should provide guidance to taxpayers on this issue, preferably as part of more general public guidance on the MAP process.

### **2.3.2 *Are there time limits to request access to the MAP?***

111. Under Article 25(1) of the UN Model, a taxpayer must present its request for MAP assistance to the competent authority within three years from the notification of the action resulting in taxation not in accordance with the treaty. Article 25(3) does not provide any time limit for a taxpayer to seek MAP assistance with respect to the interpretation or



Does the MAP request contain sufficient facts and other information to understand and evaluate the taxpayer's claim?

The MAP request should, at a minimum, present a full description of the relevant facts and circumstances and the basis for the taxpayer's claim of taxation not in accordance with the treaty. Although a competent authority may frequently ask a taxpayer to provide additional information, the MAP process is most efficient if a taxpayer submits a complete initial request. To this end, it is useful for competent authority guidance regarding the MAP to include a description of the information required to be submitted in a MAP request (for example, in the form of a checklist).<sup>16</sup>

Is the taxpayer's claim timely?

As discussed above, a competent authority should define (within the framework of Article 25 of the relevant tax treaty) the specific point from which a taxpayer may invoke the MAP – that is, when a taxpayer's case may be brought to the MAP. A competent authority may determine that the taxpayer's MAP request is premature – and thus unacceptable – if, for example, international double taxation will arise only upon the occurrence of uncertain or remote future events. Also, Article 25(1) of the UN Model requires that a taxpayer file a MAP request within three years of the notification to the taxpayer of the action that results in taxation not in accordance with the treaty. The MAP request should accordingly set forth facts to demonstrate that the request was made within the prescribed time period.

The competent authority uses this information to determine how the taxpayer's case will move forward from a procedural perspective. Thus, for example, where a Contracting State does not allow the simultaneous consideration of a taxpayer's case in both the MAP and a domestic forum, the competent authority can determine whether one process should be suspended or put on hold pending the outcome of the other process.

Has there been a decision, a settlement, or any other resolution with respect to the taxpayer's case in any domestic forum utilized by the taxpayer?

The information recommended to be provided with a MAP request includes an indication whether domestic law remedies pursued by the taxpayer have resulted in a decision, a settlement, or any other resolution. As discussed above, a tax administration may consider that it does not have the legal authority to deviate from the decision of a domestic court in the MAP. Accordingly, depending on a Contracting State's domestic law and procedure, a court decision (or other similar resolution of a taxpayer's case in a domestic forum) may limit the scope of the relief a competent authority is able to provide in a particular case.

127. After answering these questions regarding the procedural situation of the taxpayer's case and the limits (if any) on the scope of possible MAP relief, the competent authority of the taxpayer's State of residence will proceed to consider the substantive issue(s) presented in the MAP request.

128. Where the competent authority determines that the taxpayer has a valid claim and that the taxation not in accordance with the treaty is (in whole or in part) the result of the action of the State of residence, the competent authority may be able to provide relief unilaterally – that is, without involving the other competent authority. In this scenario, the competent authority should provide the appropriate relief with all possible speed.



corresponding adjustment – that is, an adjustment by the first Contracting State that offsets, in whole or in part, the other Contracting State's initial adjustment.

146. Some of these barriers to the MAP may be inconsistent with a Contracting State's obligation under Article 25 of the UN Model to endeavour to resolve through the MAP all "justified" taxpayer objections to taxation not in accordance with the treaty. These barriers may also likely conflict with a Contracting State's more general obligations under the international law of treaties.<sup>18</sup> They are certainly inconsistent with the general spirit and purpose of the MAP. Contracting States should accordingly not raise such barriers to access to the MAP without careful consideration.

#### **2.4.3 What is the effect of invoking the MAP?**

147. An aspect of the MAP that is closely linked to the relationship between the MAP and domestic law<sup>19</sup> – and with respect to which Article 25 of the UN Model is silent – is the legal effect of the taxpayer's invocation of the MAP.

148. In general, a mutual agreement is conditioned on the acceptance by the taxpayer of the mutual agreement. If the taxpayer does not accept it, the mutual agreement does not come into effect and each Contracting State will tax according to its understanding of the relevant facts and how it understands the treaty to apply with respect to those facts.

#### **2.4.4 What is the taxpayer's role in the MAP?**

149. Article 25 of the UN Model provides that a taxpayer may present a MAP request, but does not otherwise provide for taxpayer participation in the MAP. Contracting States may, however, provide for a taxpayer role in the MAP pursuant to the directive contained in paragraph 4 of Article 25 to develop, through competent authority consultations, "appropriate bilateral procedures, conditions, methods, and techniques" for the implementation of the MAP.

150. In practice, the taxpayer's role in the MAP is typically determined by domestic law (or other guidance) in the taxpayer's State of residence, on how to seek MAP assistance.<sup>20</sup> Although domestic procedures for MAP access will necessarily vary to a greater or lesser degree, the following general comments may be made with respect to the taxpayer's role in the MAP.

151. The taxpayer's primary role in the MAP is to provide the competent authority of its State of residence with complete and accurate information and documentation in a timely manner. The taxpayer should promptly advise its competent authority of any material changes in the facts and circumstances relevant to its case, as well as any new facts and information that emerge subsequent to the taxpayer's prior submissions. The taxpayer

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<sup>18</sup> See Articles 26 ("*Pacta sunt servanda*")



documentation. As discussed above, the competent authority must first make a threshold determination whether it will accept the case for MAP consideration. The competent authority then evaluates the procedural situation of the case and the scope of the relief potentially available to the taxpayer. Following these first steps, the competent authority proceeds to a substantive analysis of the facts and issues presented in the MAP request.

159. Where the competent authority is able to resolve the MAP case unilaterally, there is, of course, no need to involve the competent authority of the other Contracting State.

160. Where, on the other hand, it is necessary to initiate bilateral consideration of the case in the MAP, the competent authorities of both Contracting States must necessarily conduct their own substantive analyses. For this purpose, it is of fundamental importance that both competent authorities are working with the same set of facts.

161. The competent authority that initiates the MAP consultation process should provide the other competent authority with all of the relevant facts and information submitted by the taxpayer with the MAP request. Taxpayer involvement (for example, in the form of a presentation to both competent authorities) may also assist the competent authorities in arriving at a common understanding of the facts. Once the competent authorities agree on the facts of a MAP case, their analysis will turn to the proper interpretation of the tax treaty and its application to the taxpayer's facts.

162. The end result of each competent authority's analysis is a reasoned and principled position on how the MAP case should be resolved. Each competent authority should be prepared to articulate in a clear manner the domestic law basis for any relevant tax administration's action taken with respect to the taxpayer and, more importantly, how such action is consistent with the terms of the tax treaty.

163. The key point of reference for purposes of the competent authorities' analysis is the body of law that the two Contracting States have in common: the tax treaty itself; any agreed-upon memorandum of understanding or joint technical explanation of the treaty; and any relevant model tax treaties (such as the UN Model), together with their commentaries.

164. Although the specific manner in which each competent authority presents its respective position will be determined by the bilateral procedures developed by the Contracting States for the implementation of the MAP, at least one of the competent authorities will typically prepare a position paper setting forth its analysis and conclusions.

#### **2.4.6 How do the competent authorities interact in a MAP case?**

165. How the competent authorities interact in a MAP case is for the most part determined by the specific bilateral procedures they develop to carry out their MAP function. Article 25 of the UN Model does not provide guidance on how MAP consultations should be conducted although, as noted above, paragraph 4 of Article 25 directs the competent authorities of the Contracting States jointly to develop appropriate bilateral procedures to implement the MAP.

166. Article 25 provides considerable latitude to the Contracting States to create a procedural framework for the MAP that takes into account their specific circumstances and preferences. The Commentary on Article 25 of the UN Model contains the following useful discussion in this regard:



6. A complete description of the issue(s) presented, the relevant tax administration





190. The MAP is most likely to produce an agreement that is susceptible to providing public guidance when the matter resolved is a general question of interpretation or application (that is, a case described in the first sentence of Article 25(3)). Such a MAP agreement might concern, for example, the definition of a term used in the treaty, or a process used to apply the treaty (for example, a certification process used to determine whether a person is a resident of a Contracting State or otherwise entitled to the benefits of the treaty).

191. In the majority of MAP cases, however, the agreement reached by the competent authorities is based on a taxpayer's specific facts and circumstances and is generally not intended to establish a precedent, whether with respect to other taxpayers or even with respect to the same taxpayer in different taxable years. In practice, the letters exchanged

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company in State B. If the State B competent authority agrees through the MAP to provide



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235. Although APA negotiations are conducted pursuant to the general authority of the MAP article, the Contracting States must also determine the interaction of their domestic laws with an APA. A Contracting State should clarify the legal effect of an APA under its domestic law, preferably in the public guidance promulgated with respect to its APA program. A Contracting State should also examine whether changes to its domestic law are necessary to implement an APA program, which may include an examination of issues such as the scope of the competent authority's legal authority and the ability of a tax administration to enter into an agreement with a taxpayer with respect to prospective tax liabilities.

## **2.6 Resolving issues that may prevent a mutual agreement**

236. Given the scope and complexity of the issues that a tax treaty must address, Contracting States will inevitably have occasional differences of view on how the treaty should be applied in specific cases. Alternative B of Article 25 seeks to address situations where such differences would otherwise prevent an agreement. The Commentary on paragraph 5 of that alternative as well as the Annex on that Commentary contain useful guidance to implement the arbitration process provided for in the alternative.