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**Economic and Social Council
Committee of Experts on International Cooperation
in Tax Matters**

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Item 4 (g) of the provisional agenda

Discussion of substantive issues related to international cooperation in tax matters

Dispute resolution

**Resolving issues that prevent a mutual agreement:
Supplementary mechanisms for dispute resolution**

Addendum

**A Guide to the Mutual Agreement Procedure under
the United Nations Model Double Taxation Convention between
Developed and Developing Countries**

Subcommittee on Dispute Resolution: Background Note*

* This paper was presented by Mr. Jacques Sasseville of the OECD Secretariat as a background document for the discussion on dispute settlement at the 4th Annual Session. It was presented in relation to the mandate of the subcommittee to cooperate with the OECD in the course of its work.

Preface

At its 2007 meeting, the Committee of Experts on International Cooperation in Tax Matters (the Committee) considered recent developments in the area of dispute resolution, as well as possible changes to the United Nations Model Double Taxation Convention Between Developed and Developing Countries (the UN Model Tax Convention). According to its mandate¹, the Committee focused on questions in this area of specific interest to developing countries and countries in transition. Professor Robert Waldburger, as coordinator of the

The recommendations included in this report 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. The order and length of discussion of a specific practice does not reflect on the priority or significance of such practice. In addition, although certain tax administrations and taxpayers have found that the implementation and application of these practices result in improved outcomes in many contexts, their appropriateness must be evaluated in light of the specific circumstances in which they

1.2. Typical cases dealt with in the mutual agreement procedure

A MAP article such as Article 25 of the UN Model Tax Convention typically 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 convention (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 convention (covered by paragraph 3 of Article 25).

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 convention. 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 convention

Paragraph 1 of Article 25 of the UN Model Tax Convention 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 convention 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".

Most disputes that arise under tax conventions involve "taxation not in accordance with the provisions of the Convention". Article 25(1) is thus the most commonly referred to provision of the MAP article.

A contracting state's taxation of a person or transaction in a manner inconsistent with provisions of a convention 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").

Common examples of Article 25(1) cases include the following:

Transfer pricing cases. Historically, most Article 25(1) cases have involved transfer pricing issues and the economic double taxation that may result when a contracting state makes adjustments to income from related party non-arm's length transactions among and between the members of a multinational group of enterprises.

The economic double taxation that may arise in a transfer pricing case can be illustrated by the following example. State A makes an adjustment with respect to a related party transaction between a resident of State A and a resident of State B. Following the adjustment, State A charges tax on the resulting additional income in the hands of the related party resident in State A. The income reported in State B by the other party to the transaction, however, reflected the original (pre-adjustment) price. As a result, State B will have already charged tax on that same income (the amount of the State A adjustment) in the hands of the State B resident.

permanent establishment. State B thus taxes the State A enterprise on the profits it considers attributable to this State B permanent establishment. State A, on the other hand, does not consider the State A enterprise to have a State B permanent establishment and, accordingly, takes the view that only State A may tax the profits attributable to the State B business. As a result, the State A enterprise is subject to tax in both states on the profits of the State B business.

Dual-residence cases. Article 4 (Residence) of the UN Model Tax Convention provides that an individual is a resident of a contracting state for purposes of the convention if he is liable to tax in that state by reason of domicile, residence, or any other similar criterion. Differences in the domestic law criteria used to determine the comprehensive liability to tax that will give rise to residence for convention purposes, however, may often cause an individual to be considered a resident under the tax laws of both contracting states.

Paragraph 2 of Article 4 thus sets out a series of tiebreaker tests that examine an individual's facts and circumstances to determine the contracting state with which the individual has a greater connection, and, accordingly, a single residence country for purposes of the convention. Given the fact-intensive and subjective nature of the tiebreaker tests, requests for MAP assistance may often arise because an individual disagrees with how the tests have been applied by one (or both) of the contracting states.

For example, Article 4(2)(a) provides that an individual with a permanent home in both contracting states will be deemed to be a resident only of the state with which his personal and economic relations are closer (centre of vital interests). The application of this test requires the examination of a great number of factors – family and social relations, occupations, political and cultural activities, place of business, etc. Different views on how these factors should be weighed may lead to different conclusions. (TJ0.0004 T071.ding1169)-4(er

1.2.2. Article 25(3) cases – interpretation and application of the convention/double taxation in cases not provided for in the convention

The first sentence of paragraph 3 of Article 25 of the UN Model Tax Convention provides that the contracting states will endeavour to resolve by mutual agreement “difficulties or doubts” as to the interpretation or application of the convention. Pursuant to this provision, the contracting states undertake to discuss and resolve by mutual agreement any issues or questions related to the convention that require clarification or interpretation.

These issues and questions will often be of a general nature. For example, as discussed below, Article 25(3) may be used to agree on the definition of a specific term used in the convention, or on procedures to give effect to a specific convention 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 an Article 25(1) case).

Article 3(2) of the UN Model Tax Convention provides that a term not specifically defined in the convention will generally have the meaning that it would have under the domestic law of the contracting state applying the convention with respect to its taxes. In some cases, however, a term used in the convention may not be defined under a contracting state’s domestic law, or the use of a domestic law definition may not be appropriate in a specific context. In other cases, inconsistencies between the contracting states’ domestic law definitions of a term may potentially create obstacles to the uniform application of a specific provision of the convention.

The first sentence of Article 25(3) directs the contracting states to use the MAP to agree to a common meaning of a term where necessary to provide clarity, to ensure that a provision achieves its intended purpose, and/or to ensure that the convention is consistently applied. The competent authorities may thus, for example, use the MAP to agree on a common definition, for purposes of the convention, of terms such as “place of management” (used in Article 5 (Permanent Establishment) of the UN Model Tax Convention) or “banking enterprise” (used in Article 7 (Business Profits)).

Some countries have found that the active pursuit of opportunities to use the authority provided by Article 25(3) is a means to improve the implementation of income tax conventions. 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 may serve to provide guidance and proactively resolve potential future disputes.

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 convention. Such agreements, could concern, for example, the certification of 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.

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-2(asbo8sfsgcts 0.0S Tw 4o0 Tds)-4(e s cs adcern,)8(fagree)

double taxation because a portion of the income of the third-country resident may be subject to tax in both State A and State B.

The use of Article 25(3) to reach a MAP resolution in cases not otherwise covered by the convention may be considered to fulfil one of the fundamental purposes of the convention – the elimination of international double taxation. Countries may accordingly consider it appropriate to make active use of this Article 25(3) authority.

1.3. What is a competent authority?

The UN Model Tax Convention, like other tax conventions, 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 convention. 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 convention 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 convention.

Other articles of the UN Model Tax Convention also make reference to the competent authorities and specifically provide for competent authority assistance with respect to particular matters. See, for example, paragraph 2 of Article 9 (Associated Enterprises)⁷ and sub-paragraph 2(d) of Article 4 (Resident).⁸

1.3.1. Purpose of a competent authority and the performance of its functions

In broad terms, the purpose of the competent authority is to ensure that a tax convention is properly applied and to endeavour in good faith to resolve any disputes that may arise as to its application or interpretation.

In performing its functions, the competent authority is to be guided first by the terms of the convention itself. The competent authority must then refer to any guidance promulgated under the convention. Such guidance may include, for example, an agreed-upon commentary or technical explanation to the convention, or an agreement of general application concluded by the competent authorities pursuant to the MAP. Model tax conventions (such as the UN Model Tax Convention) upon which the convention was based, and their commentaries, are an additional important point of reference.

Competent authorities should make every effort to resolve cases in a principled, fair, and objective manner, deciding each case on its own merits and not with reference to revenue statistics or an overall balance of results. Moreover, and especially in light of the principle of reciprocity underlying any international

⁷ Under Article 9 of the UN Model Tax Convention, a contracting state may adjust the income of a resident enterprise where the enterprise takes part in a related party transaction that does not occur at arm’s length. Article 9(2) provides that the competent authorities shall consult, if necessary, to determine the appropriate correlative adjustment to be made in the other contracting state.

⁸ Article 4(2)(d) of the UN Model Tax Convention provides that the competent authorities shall determine the residence of an individual by mutual agreement where the Article 4 tiebreaker tests do not resolve the matter.

Countries have also found that the functioning of a MAP program is enhanced if the official performing the competent authority function is known and readily accessible to taxpayers. To this end, contracting states may consider it useful to publicise the identity of the officials responsible for carrying out the competent authority function, as well as information on how to contact the competent authority. Many countries provide this information to taxpayers as part of their general public guidance on how to seek MAP assistance.

Once a contracting state has determined who will be responsible for the day-to-day activities of the competent authority, it must also determine how the competent authority's work will be structured. The approach chosen will, of course, depend upon the specific circumstances of a contracting state's tax administration, including the resources available and the present (or anticipated) MAP caseload.

A contracting state may potentially separate its competent authority function into a group responsible for taxpayer-specific cases (that is, cases of taxation not in accordance with the convention and cases of double taxation not described in the convention) and a group responsible for general or interpretive questions that do not involve a specific taxpayer. Based on the types of MAP cases in inventory, a contracting state may also choose to organize the work of the competent authority by country or region, taxpayer industry, or type of taxpayer (individual, corporate, etc.).

The effectiveness of a MAP program may also be improved if the competent authority function is given a certain degree of independence from the field personnel responsible for taxpayer audits and adjustments. Such independence may enhance the objectivity of the competent authority and thus its ability to apply the convention in a fair and impartial manner. An autonomous competent authority should, in addition, be best able to focus on its primary objective – relieving international double taxation.

Countries have similarly found it helpful where the measures used to evaluate the performance of the competent authority relate to factors such as the time taken to resolve a case, consistency, and principled and objective outcomes, not, for example, the number of sustained audit adjustments or amount of tax revenue. The use of these criteria reinforces the goals and objectivity of the competent authority function and thereby

Accounting standards. Knowledge of accounting standards and practices, in particular those used by large taxpayers, may often be required to understand certain aspects of a taxpayer's business, industry, or a specific transaction.

Examination procedures. The records of a domestic examination may frequently be the competent authority's main source of information in a MAP case. Knowledge and understanding of the examination process, as well as domestic law reporting, documentation, and substantiation requirements, will enable the competent authority to make the most productive use of the information at its disposal.

Maintaining and developing the skills of the competent authority staff also require that a tax administration devote appropriate resources to their training.

In addition to skilled personnel, the competent authority should ideally be provided with adequate financial resources to meet its obligations under the convention. A competent authority must bear the expenses related to face-to-face meetings with other competent authorities (such as travel and accommodation expenses) and may also require funds to pay for the services of experts or consultants (for example, economists or industry specialists consulted in complex transfer pricing cases).

The translation of documents (for example, translations of contracts or foreign tax law) and interpretation services (for example, in the the context of a face-to-face meeting of competent authorities) may require additional resources.

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extend the relevant periods. This procedure may involve, for example, filing a request or a specific form with the tax administration.

Submitting a protective claim. In some states, one may

If, however, the terms and conditions of a MAP resolution are not satisfactory to the taxpayer, the taxpayer may be entitled (under a contracting state's domestic law or procedure) to reject the MAP resolution and pursue any and all available domestic remedies. As in the situation in which the contracting states are unable to reach agreement in the MAP, such domestic remedies will be available only if the taxpayer has taken appropriate measures to protect its rights to those remedies under the applicable domestic law.

As noted in paragraph 3 of the Commentary on Article 25 of the UN Model Tax Convention, the case may also arise where a taxpayer with a suit still pending in a domestic court requests to defer its decision whether to accept a MAP resolution until the court delivers its judgement.¹⁰ Although the Commentary notes that there would be no grounds for rejecting such a taxpayer request, contracting states may be concerned about possible divergences or contradictions between the decision of the court and the MAP agreement. As a result, any implementation of a mutual agreement should be made to depend on the taxpayer's express acceptance of the terms of the mutual agreement as well as the taxpayer's withdrawal of any suit still pending in a domestic court regarding the matters settled through the MAP.¹¹

Different issues may arise in the alternative scenario in which a taxpayer's case is resolved in a domestic court and the MAP has been suspended or put on hold (or the competent authorities have not otherwise reached a MAP resolution). Most significantly, the tax authorities of a contracting state may consider that they do not have the legal authority to deviate from the decision of a domestic court in the MAP. If this is the case, the decision rendered by the d/TT0 1 Tf0 Tc 10.98nt 1 pebi007 Tc bi007 T0 admcpdisctin and pursrev issutom thetecvig th

2. THE MUTUAL AGREEMENT PROCEDURE

2.1. What is a request for MAP assistance?

Under Article 25 of the UN Model Tax Convention, 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 convention may request the assistance of the competent authority to relieve international double taxation and/or the other consequences of such taxation. Such a taxpayer request is referred to as a request for MAP assistance.

Competent authorities may require a great deal of information to consider and resolve appropriately certain of the more common (and fact-intensive) types of MAP cases (for example, transfer pricing, permanent establishment, and residence cases). In developing procedures for the presentation of a MAP request, a competent authority should consider how to balance its need for information with the complexity of the issues in a particular case and the burdens imposed on taxpayers to collect the required information.

In a context in which a competent authority has not developed a prescribed format for the presentation of a MAP request, a taxpayer should generally provide the following information (to the extent relevant to the request):

1. The name, address, and any taxpayer identification number of the taxpayer;
2. The name, address, and any taxpayer identification number of the related foreign taxpayer(s) involved (for transfer pricing cases);
3. The foreign tax administration involved and, if relevant, the regional or local tax administration office that has made, or is proposing to make, the adjustment(s);
4. The tax convention article that the taxpayer asserts is not being correctly applied, and the taxpayer's explanation of how it believes the article should be interpreted and/or applied;
5. The taxation years or periods involved;
6. A summary of the facts, including the structure, terms, and timing of all relevant transactions and the relationships between related parties (the taxpayer should advise the competent authority of how the facts may have changed during or after 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 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);
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);
10. A statement indicating whether the taxpayer or a predecessor has made a prior request to the competent authority of either contracting state with respect to the same or a related issue or issues;

The Commentary on Article 25 of the UN Model Tax Convention contains the following useful discussion on the issue of when the MAP may be invoked:

15. Probably, most competent authorities, at least in the early stages of their experience,

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.

After answering these questions regarding the procedural posture 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.

Where the competent authority determines that the taxpayer has a valid claim and that the taxation not in accordance with the convention 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.

Where the taxation not in accordance with the convention is the result of the action of the other contracting state (or the competent authority of the taxpayer's state of residence is otherwise unable itself to provide satisfactory relief), the second stage of the MAP process begins. The competent authority of the taxpayer's state of residence initiates contact with the other competent authority to endeavour to resolve the matter by mutual agreement.

This contact with the other competent authority should take place as soon as practically possible. It may typically occur using an opening letter or other similar document containing basic information about the MAP case. The other competent authority should confirm its receipt of the opening letter and, after a preliminary review, indicate whether it agrees to initiate MAP discussions.

Where the competent authority of the other contracting state agrees to discuss the case in the MAP, both competent authorities will proceed to an in-depth analysis of the merits of the case and the issues presented, in preparation for the bilateral discussion of the case.

The framework for this analysis and discussion is generally provided by a position paper prepared by one of the competent authorities. The position paper is typically prepared by the competent authority of the contracting state that took the action(s) that led to the taxation that is alleged to be contrary to the convention. In a more complex MAP case, the other competent authority may prepare and present a formal rebuttal to the initial position paper.

When the competent authorities are ready to discuss a MAP case, their discussions may take place using a great variety of methods – for example, by correspondence, by telephone or video conference, or in face-to-face meetings. Depending on the complexity of the issues involved, the competent authority negotiations may occur in a series of meetings or other consultations. The MAP discussions may also lead to requests for additional information or other clarification from the taxpayer.

As with other aspects of the MAP, Article 25 of the UN Model Tax Convention is silent with respect to how contracting states will conduct their MAP negotiations. Under Article 25(4), the contracting states are directed to develop appropriate bilateral procedures to implement the MAP. Such procedures include procedures for the notification and discussion of MAP cases.

The procedures developed for the conduct of the MAP should take into account, among other considerations, the experience of the respective competent authorities, their current and anticipated MAP caseload, and the

Paragraph 3 of Article 9 is also relevant in discussing barriers to MAP. That paragraph provides:

The provisions of paragraph 2 [of Article 9] shall not

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?*

An aspect of the MAP that is closely linked to the relationship between the MAP and domestic law²² – and with respect to which Article 25 of the UN Model Tax Convention is silent – is the legal effect of the taxpayer's invocation of the MAP.

In particular, contracting states must determine whether a taxpayer that invokes that MAP should be bound by the resolution reached by the competent authorities. If contracting states determine that the MAP should be a binding (and thus exclusive) relief procedure, a number of steps are involved.

Both contracting states must first evaluate whether a binding MAP is consistent with their domestic law. Depending on the circumstances, it may be necessary for a contracting state to change its domestic law to make a MAP agreement binding on a taxpayer.

The contracting states must also, of course, discuss their views on a binding MAP with each other. Such discussions should ideally occur during the negotiation of the tax convention itself.0.0iUnt taxi(p)-2orces, at the M.

Even though a taxpayer will usually not be directly involved in MAP discussions, the competent authority to which its MAP request was submitted should regularly communicate with the taxpayer regarding the status of its case and the relevant consultations. Such communications may encourage taxpayer cooperation with the MAP (for example, the prompt submission of additional information or documentation, when necessary) and should also improve the overall transparency of the MAP process.

2.4.5. *How does the competent authority analyse and evaluate a MAP case?*

A competent authority's evaluation of a MAP case will usually begin when the competent authority receives the taxpayer's MAP request and the supporting 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 posture 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.

Where the competent authority is able to resolve the MAP case unilaterally, there is, of course, no need to

2. Contact information for the competent authority official in charge of the MAP case;
3. A summary of the issue(s) presented, the relevant facts, and the basis for the tax administration action that is the subject of the MAP request;
4. The taxation years or periods involved;
5. The amount of income and the relevant tax for each taxable year, if applicable;
6. A complete description of the issue(s) presented, the relevant tax administration actions and adjustments, and the relevant domestic laws and treaty articles;
7. To the extent relevant and appropriate, calculations and supporting data (which may include financial and economic data and re

4. Other or additional information considered relevant to the case but not presented in the initial position paper; and
5. Alternative reasoned proposals for resolution.

In practice, competent authorities may conduct their discussions and consultations using many different means, including letters, facsimiles, electronic mail, telephone and video conferences, and face-to-face meetings.

Face-to-face meetings may in many circumstances be the most effective manner to reach a resolution in a MAP case because they oblige each competent authority to develop and present a reasoned position by a set deadline. They may also foster a more candid and collegial discussion. The effectiveness of face-to-face meetings is further enhanced when such meetings involve competent authority officials who are themselves authorized to resolve MAP cases.

Of course, contracting states must determine how best to conduct their MAP consultations in the context of their bilateral relationship, taking into account factors such as the specific characteristics and experience of each competent authority, available resources, and the expected MAP caseload. Regardless of the means of consultation chosen, competent authorities should be encouraged to maintain open lines of communication throughout the MAP process, with a view to clarifying issues and facts and thereby moving MAP cases to resolution with all possible speed.

In some circumstances, the competent authorities may wish to memorialize the bilateral procedures they develop for the conduct of the MAP in the form of a memorandum of understanding (MOU) or other published guidance. This guidance may be broadly applicable (for example, establishing general objectives or timelines for all MAP cases) or concern a specific sub-set of MAP cases (for example, clarifying documentation requirements for transfer pricing cases).

MOUs promote a consistent approach to MAP cases and advance the MAP process, especially where they free the competent authorities to focus on substantive (rather than procedural) issues or provide guidelines for further process improvements. In addition, the publication of MOUs or other similar guidance enhances transparency and improves taxpayer understanding of the MAP process.

2.4.7. *What happens when the competent authorities reach an agreement?*

As noted above, when the competent authorities reach agreement in a MAP case, they will typically memorialise its details in a written summary describing the method of relief, the extent to which each contracting state will provide relief, the timing of relief, and any other details.

The relevant competent authority – that is, the competent authority to which the taxpayer presented its MAP request – then notifies the taxpayer that a MAP agreement has been reached and explains the details of the MAP resolution.

A competent authority must determine for itself the manner in which it informs a taxpayer that a MAP agreement has been reached, as well as the level of detail provided in its explanation of the proposed resolution.²⁵ The summary of the MAP agreement provided to the taxpayer may typically take the form of a

²⁵ Such procedures would be developed under the authority of paragraph 4 of Article 25, which permits a competent authority to “devise appropriate unilateral procedures, conditions, methods, and techniques to facilitate the above-mentioned bilateral

Because treaty-based or domestic law time limits may limit the effectiveness of the MAP, it is also helpful for a competent authority to remind the taxpayer when its MAP request is accepted of any time limits for the implementation of MAP relief that are applicable in the taxpayer's specific case. In any case, the overly strict interpretation of such time limits is seen by many countries as contrary to the spirit of the MAP.

2.4.9. *What is the recommended timeline for the MAP?*

The time required to complete a MAP case will depend on a number of factors, including the complexity of the case, the resources available to the competent authorities, and their overall caseloads. In general, however, most competent authorities will endeavour to complete a MAP case within two years of the date of its acceptance. The following table illustrates an ideal timeline for a typical Article 25(1) MAP case:

| Action | | | |
|---|--|--|---|
| Taxpayer | State A Competent Authority (Taxpayer's State of Residence) | State B Competent Authority | Target Time Frame or Deadline |
| STAGE ONE | | | |
| <ul style="list-style-type: none"> • Submit MAP request to State A Competent Authority (CA). • If a transfer pricing case, Taxpayer (or the associated enterprise in State B) is encouraged to contact State B CA and to provide it with the relevant details of the MAP request. | | | Under Article 25(1) of the UN Model Tax Convention: "within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Convention" |
| | <ul style="list-style-type: none"> • Confirm receipt of MAP request. • Advise State B CA of MAP request. • Preliminary review of MAP request. • Where necessary, request additional information from Taxpayer. | | Within one month of Taxpayer's submission of the MAP request to State A CA. |
| | <ul style="list-style-type: none"> • Determine whether MAP request will be accepted. • Notify Taxpayer whether MAP request will be accepted. • If case accepted, determine whether unilateral relief is possible and appropriate. | | Within one month of Taxpayer's submission of all information required by State A CA to determine whether the MAP request will be accepted. |
| STAGE TWO | | | |
| | <ul style="list-style-type: none"> • If no unilateral relief possible, propose to State B CA to initiate MAP discussions – issue opening letter to State B CA. | | Within one month of Taxpayer's submission of all information required by State A CA to determine whether the MAP request will be accepted. |

Throughout the consideration of a MAP case, the competent authority that received the MAP request may consider it a useful practice to provide periodic, informal status updates to the taxpayer.

It may also be valuable for the competent authorities to advise each other on a regular basis (for example, every three months) of their progress on a MAP case. Such updates should keep both competent authorities focused on the details of the case and its overall progress, and should thereby facilitate its timely resolution.

Requests for additional information or clarification (whether competent authority-to-taxpayer or competent authority-to-competent authority) should not, however, be deferred until these periodic MAP case status updates. Such requests should be made as soon as practically possible, given that delays in receiving additional information or clarification may delay the substantive consideration (and thus the resolution) of a MAP case.

As discussed above, the framework for analysis and discussion in a MAP case is generally provided by a position paper. In most contexts, it is considered realistic and appropriate for the position paper to be prepared by the responsible competent authority within four to six months of the latter of (i) receipt of a complete submission of all relevant information, or (ii) notification by the other competent authority that it agrees to discuss the case in the MAP.

It is similarly reasonable to expect the other competent authority to complete its evaluation and response (if any) to the position paper within six months of its receipt of the position paper.

If it is not possible for a competent authority to respect this timetable for the preparation or review of the position paper, the relevant competent authority should timely advise its counterpart of the reasons for the delay and provide a projected timeframe for completion. Of course, the competent authorities should endeavour promptly to raise, and respond to, supplementary questions that arise during the review of the position paper, in order to clarify any issues before their formal MAP negotiations.

More generally, the competent authorities should endeavour to exchange all relevant information well in advance of their meetings. Where both competent authorities have adequate time prior to a meeting to review the materials and to consider fully the case and issues

2.4.10. *What is the relationship between the MAP and domestic law penalties, interest, and collections?*

Contracting states may have different views on whether a tax convention applies with respect to interest and penalties on a tax adjustment that is the object of a MAP request. Contracting states may similarly take different positions with respect to whether their domestic collection procedures should apply to tax adjustments that are the object of MAP discussions.

As with many other areas of the MAP, Article 25 of the UN Model Tax Convention is silent on these issues. Contracting states must accordingly reach their own conclusions regarding the interaction of the MAP and the relevant domestic law provisions. The contracting states should also ideally discuss these issues in the context of their tax convention negotiations and/or during their development of bilateral procedures for the conduct of the MAP.

In certain circumstances, a contracting state may take the position that interest and penalties are outside the scope of a tax convention because they are not expressly referred to in the convention. In such a case, the contracting state may conclude that its competent authority cannot or should not waive or otherwise consider interest and penalties as part of the MAP.

A contracting state's views on the relationship between the MAP and domestic law penalty provisions may also depend on the nature of a specific penalty. Certain penalties – for example, a penalty for failure properly to maintain transfer pricing documentation – may concern domestic law compliance issues that are outside the scope of the MAP and the tax convention. The competent authority may as a result be unable or unwilling to discuss them in the MAP.

In contrast, other penalties (such as certain transfer pricing penalties) may be linked to the amount of an adjustment that is itself the object of a MAP request. In a case in which a contracting state that has applied such a penalty agrees in the MAP to reduce the amount of the underlying adjustment, that state should appropriately reduce the amount of the penalty, regardless of its view as to whether the convention covers penalties.

Some contracting states may also be willing to provide relief from penalties through the MAP even where the adjustment that gave rise to the MAP is fully or partially sustained in the MAP. A contracting state may feel that such relief is appropriate, for example, if it appears after MAP review that the application of the penalty is no longer justified.

Differences between domestic law provisions on the accrual of interest on tax liabilities and refunds may create other issues for the MAP. Even if the MAP eliminates the international double tax that was the object of the MAP request, the taxpayer may still suffer a significant and equivalent economic burden if there are asymmetries with respect to how interest accrues on tax liabilities and refunds in the two contracting states.

For example, a MAP agreement may often result in an additional tax liability in one contracting state and a corresponding refund of tax in the other contracting state. In a scenario in which the first contracting state charges interest on the tax deficiency (or collects tax prior to the MAP resolution) and the second contracting state does not pay interest on the amount refunded to the taxpayer, this may result in a substantial economic burden on the taxpayer.

In light of this burden, it is desirable for contracting states to adopt flexible approaches to provide for relief of interest in the MAP, where they consider that their competent authorities are permitted to do so and where such

relief is appropriate. Some contracting states may feel that relief from interest is especially appropriate for the period in which the taxpayer is in the MAP process, given that the amount of time it takes to resolve a case through the MAP is, for the most part, outside the taxpayer's control. In many cases, however, changes to the domestic law of a contracting state may be required to pe

program will be administered. This information and other guidance should be made readily available to the public to promote transparency and to encourage taxpayer use of the APA program.

One example of comprehensive taxpayer guidance on the domestic conduct of an APA program is provided in

resolution mechanisms should also help to reduce the likelihood of costly and time-consuming domestic proceedings, as well as potentially inconsistent court decisions.
