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(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 common

the profits so included are profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State shall make an appropriate adjustment to the amount of the tax charged therein on those profits....

23. Certain tax treaties, however, may not contain a provision similar to paragraph 2 of Article 9.

24. In this circumstance, it should be noted that the Commentary on Article 25 of the UN Model Tax Convention makes clear that Article 25 provides machinery to enable competent authorities to consult with a view to resolving the economic double taxation that may arise in transfer pricing cases. The Commentary expressly States that “the corresponding adjustments to be made in pursuance of paragraph 2 of [Article 9] ... fall within the scope of the mutual agreement procedure, both as concerns assessing whether they are well-founded and for determining their amount”.³

25. The Commentary further States that even when a tax treaty does not contain rules similar to those of Article 9(2), the mere fact that the Contracting States have included Article 9(1) in a treaty demonstrates the intent to have economic double taxation covered 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.”⁴

Permanent establishment cases

26. Under Article 7 (Business Profits) of the UN Model, the business profits of an enterprise of a Contracting State are taxable only in that State, unless the enterprise carries on a business in the other Contracting State through a permanent establishment.

27. Taxpayers frequently use the MAP where they disagree with a Contracting State’s conclusion that their presence or activities in that State give rise to a permanent establishment – and thus that part of their business profits are taxable in that State. Requests for MAP assistance are also often made in connection with the determination of the profits attributable to a permanent establishment.

28. Permanent establishment cases may often involve juridical double taxation. For example, consider a State A enterprise that does business in State B. In State B’s view, these activities give rise to a State B permanent establishment. State B thus taxes the State A enterprise on the profits it considers attributable to this State B permanent establishment as well as other profits referred to in subparagraphs *b*) and *c*) of paragraph 1 of Article 7. 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 attributable to its State B business.

Dual-residence cases

29. Article 4 (Resident) of the UN Model provides that an individual is a resident of a Contracting State for purposes of the treaty if he is liable to tax in that State by reason of domicile, residence, place of incorporation, place of management or any other criterion of a similar nature. Differences in the domestic law criteria used to determine the comprehensive liability to tax that will give rise to residence for treaty purposes, however, may often cause an individual to be considered a resident under the tax laws of both Contracting States.

30. Paragraph 2 of Article 4 thus sets out a series of tie-breaker tests to determine a single State of residence for purposes of the treaty. Given the fact-intensive nature of many of these tests, requests under the MAP may often arise because an individual disagrees with how the tests have been applied by one (or both) of the Contracting States.

³ See paragraph 3 of the Commentary on Article 25 of the UN Model Tax Convention.

⁴ *Id.*

39. 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.

40. 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

54. Countries that have considerable practical experience of the MAP process have recognised that the efficiency and effectiveness of a MAP program is enhanced if the senior tax officials to whom the competent authority function has been delegated are actively and directly engaged in the MAP process – for example, where officials with decision-making authority with respect to MAP cases remain informed of the details of MAP cases and are closely involved in detailed bilateral MAP discussions.

55. Countries have also found that the functioning of a MAP program is enhanced if the officials performing the competent authority function are 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.

56. 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.

57. A country that is rarely involved in MAP cases may well prefer to delegate the competent authority functions to the officials in charge of the negotiation of tax treaties because these officials will be familiar with the provisions of tax treaties and, often, with the treaty negotiators and competent authorities of other countries with which tax treaties have been concluded. A Contracting State that has to deal with a very large number of MAP cases, however, may want to separate its competent authority function into various groups based on regions, taxpayer industry, or type of taxpayer (individual, corporate, etc.).

58. Regardless of how the competent authority function is organised, it is important that the responsible officials implement a system of recordkeeping with respect to the receipt of requests for MAP assistance. Such records permit monitoring of the progress made in MAP cases (*i.e.* the time required to resolve a MAP case) and provide an objective measure to assess the effectiveness of a country's MAP programme.

59. It is also important that the competent authority keep records of the decisions and resolutions that have been reached through competent authority agreements. Internal records of the outcomes in MAP cases help to guarantee the consistent interpretation of a treaty in similar cases. It should be noted in this regard that countries typically do not publish taxpayer-specific agreements reached through the MAP. Since information received from the other competent authority is subject to the confidentiality requirement of paragraph 2 of Article 26, such information cannot be publicly disclosed (except for the limited purposes provided for in that paragraph).

60. The effectiveness of a MAP program

68. A Contracting State should determine the procedure to be followed when a taxpayer has invoked both the MAP and a domestic recourse procedure. As a general matter, most tax administrations will deal with a taxpayer's case in the MAP or in a domestic forum (usually a court), but not both at the same time: one process will be suspended or put on hold pending the outcome of the other.

69. A competent authority should therefore be able to inform taxpayers as to how it will handle cases where a taxpayer seeks to obtain relief through both the MAP and a domestic recourse procedure.

70. In some countries, a taxpayer may only invoke the mutual agreement procedure once the taxpayer has exhausted all domestic law remedies (*e.g.* by waiving its rights of appeal or letting time-limits for appealing lapse). This approach risks putting the taxpayer in a position where no solution will be found to its case if the competent authorities cannot reach an agreement.

71. The practice followed by many countries, however, is to allow the taxpayer to choose whether the MAP or the domestic procedure will proceed first. In this regard, it is 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.

72. 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 may then be terminated. If, however, the proposed agreement reached through app rea ofsuith wthiry-1.9(r)49.2(i)1.9(r)4.8(o)4.1

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.

75. 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.

76. 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.

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

78. 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

14. If the taxpayer has not already provided consent for a person to act as its authorised representative, a signed statement that a representative is authorised to act for the taxpayer in all matters connected with the MAP request;
15. A copy of any settlement or agreement reached with the other jurisdiction that may affect the MAP process (with a translation, if applicable);
16. The taxpayer's view on any possible bases on which to resolve the issues;
17. Any other facts that the taxpayer may consider relevant.

93. The taxpayer should attest to the accuracy and completeness of the facts and information presented in a MAP request in a signed statement accompanying the request.

94. A competent authority will typically not charge a fee for a MAP request, although there may be fees associated with certain competent authority functions or activities, such as Advance Pricing Arrangement programs.

95. To the extent feasible, tax administrations may consider it helpful to allow the electronic submission of documents in the context of the MAP. Electronic submission may facilitate the delivery of information to the two competent authorities as well as the connected burdens on taxpayers.

96. A competent authority's ability to understand, analyse, and respond to a taxpayer's MAP request will of course depend upon the quality of the information available. A taxpayer that provides accurate and complete information in a timely manner will facilitate the resolution of its case.

97. In addition, to the extent that a taxpayer provides information to both competent authorities in the MAP process,⁹ the taxpayer should ensure that it provides the same inform

106. Many countries believe that MAP requests should be allowed at the early stages of a potential dispute, as soon as it appears likely that an issue will result in taxation contrary to the relevant treaty. Relevant tax administration actions in the early stages of a dispute might include, for example, notification of a proposed adjustment or assessment, or the rejection of a taxpayer protest to a proposed adjustment or assessment. Early consideration of MAP cases may facilitate the identification of pragmatic solutions before the tax administration and the taxpayer have devoted significant resources to prepare the case.

107. Developing countries and countries in transition, especially those with more limited MAP experience and/or competent authority resources, may, however, prefer that MAP requests not be made until there is a more concrete possibility of taxation not in 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 (see paragraph 97).

108. The Committee is of the view that the

116. In contrast, where the relevant tax is levied through a self-assessment system, there will typically be some form of notification effecting the assessment, such as a notice of liability or of denial or adjustment of a claim for refund. In such

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 y

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.

126. 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.

127. 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.

128. Where the taxation not in accordance with the treaty 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.

129. 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.

130. 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.

131. 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 treaty. In a more complex MAP case, the other competent authority should prepare and present a reasoned rebuttal to the initial position paper.

in such circumstances. If such cases are accepted for MAP consideration, these competent authorities may do no more than forward the cases to the other competent authority, which may then provide correlative relief at its discretion.

143. This approach may likely not lead to a satisfactory resolution. Moreover, even where a tax treaty specifically provides for the application of a Contracting State's anti-avoidance provisions, Contracting States should carefully examine whether their application in a particular case is in conflict with other provisions of the relevant tax treaty.

144. Competent authorities may also decide not to accept a taxpayer's MAP request (or not to provide relief) for other policy reasons, or because a tax administration would like a judicial precedent with respect to a specific issue.

145. These barriers to the MAP may in many cases 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.¹⁵ 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?

146. An aspect of the MAP that is closely linked to the relationship between the MAP and domestic law¹⁶ – 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.

147. 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?

148. 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.

149. 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.¹⁷ 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.

150. 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 should similarly provide complete and timely responses to any competent authority requests for additional information.

¹⁵ See Articles 26 ("*Pacta sunt servanda*") and 27 (Internal law and observance of treaties) of the Vienna Convention on the Law of Treaties (United Nations, *Treaty Series*, vol. 1155, p. 331). Article 26 of the Vienna Convention provides that every treaty is binding on the parties thereto and must be performed by them in good faith. Article 27 of the Vienna Convention provides that a party to a treaty may not invoke the provisions of its internal law as justification for its failure to perform under a treaty.

¹⁶ See section 1.4 above.

¹⁷ A Contracting State may generally prefer to apply the same procedures to all resident taxpayers seeking MAP assistance, regardless of the applicable tax treaty, rather than to develop specific procedures for MAP access under each individual tax treaty. This policy may facilitate the administration of a competent authority's MAP function and assure the uniform treatment of taxpayers (with respect to access to the MAP).

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.

161.0 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.

162. 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.

163. 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?

164. 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.

165. 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:

25. The competent authorities will have to decide how their consultation should proceed once that part of the procedure comes into operation. Presumably, the nature of the consultation will depend on the number and character of the cases involved. The competent authorities should keep the consultation procedure flexible and leave every method of communication open, so that the method appropriate to the matter at hand can be used.

26. Various alternatives are available, such as informal consultation by telecommunication or in person; meetings between technical personnel or auditors of each country, whose conclusions are to be accepted or ratified by the competent authorities; appointment of a joint commission for a complicated case or series of cases; formal meetings of the competent authorities in person etc. It does not seem desirable to place a time limit on when the competent authorities must conclude a matter, since the complexities of particular cases may differ. Nevertheless, competent authorities should develop working habits that are conducive to prompt disposition of cases and should endeavour not to allow undue delay.

166. As noted in paragraph 31 of the Commentary on Article 25 of the UN Model, the competent authorities should make public, in as complete a manner as possible, the procedures they have adopted for the conduct of the mutual agreement procedure.

167. The framework for the MAP consultation in a specific case is typically provided by a position paper prepared by one of the Contracting States. As already explained, a position paper is a document that sets out a detailed description of the relevant facts and issues, frames the questions to be resolved, and presents reasoned proposals for their resolution.

168. The position paper will generally be prepared by the competent authority of the Contracting State that took the action(s) that led to the taxation that the taxpayer alleges to be contrary to the treaty, regardless of the competent authority to which the taxpayer made its MAP request. The preparation and transmission of position papers is generally regarded as a matter of priority because of their important role in facilitating meaningful MAP discussions – and thus the timely resolution of a MAP case.

169. A position paper should generally contain the following relevant information:

1. The name, address, and taxpayer identification number (if any) of the taxpayer making the MAP request and of related persons in the other Contracting State (if relevant), and the basis for determining the association;
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 reports relied upon by the tax administration, as well as relevant taxpayer documents and records); and
8. For transfer pricing cases,¹⁸
 - (i) An outline of comparable transactions and methods of adjusting for differences;
 - (ii) A description of the methodology used to make the adjustment(s); and
 - (iii) An explanation of the choice of the methodology used to make the adjustment(s), including why the tax administration believes the methodology chosen is best-suited to achieve an arm's length result; identification of the tested party, if applicable; and an industry and functional analysis (to the extent that the relevant studies are not included in taxpayer documentation required to be prepared under the domestic legislation of the taxpayer's State of residence).

170. Following its review of the position paper, the other competent authority may request additional information and/or clarification with respect to the information presented.

171. In addition, depending on the complexity of the issue(s), the other competent authority may itself prepare a rebuttal or response paper. The written exchange of positions may help to focus the competent authorities on the precise area(s) of disagreement and thereby make their MAP consultations more productive.

¹⁸ 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.

172. Where the other competent authority prepares a rebuttal or response paper, the paper may be most useful if it contains the following information:

1. An indication whether a view, resolution, or proposed relief presented in the initial position paper can be accepted;
2. An indication of the areas or issues where the competent authorities are in agreement or disagreement;
3. Requests for any required additional information or clarification;
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.

173. 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.

174. 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.

175. 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.

176. 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 ~~poscure~~ ^{concern} specific sub-set of MAP cases (for example, clarifying documentation requirements for transfer pricing cases).

177. 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?

178. As noted above, when the competent authorities reach agreement in a MAP case, they will typically memorialise

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).

190. In the majority of MAP cases, however, the agreement reached by the competent authorities is based on a

- (i) State A may consider deferring the tax payment due as a result of its adjustment or even waiving the payment if, for example, payment or reimbursement of an expense charge by the State B company is prohibited at the time because of currency or other restrictions imposed by State B.
- (ii) State A may consider steps to facilitate carrying out the adjustment and payment of a reallocated amount. For example, the State B company may be allowed, for State A tax purposes, to establish in its books an account payable in favour of the State A company in the amount of the State A adjustment, and the State A company will not be subject to a second State A tax on the establishment or payment of the amount receivable. The payment of the account receivable by the State B company should also not be considered a dividend by State B.
- (iii) State B may also consider steps to facilitate carrying out the adjustment and payment of a reallocated amount. This may, for example, involve recognition of the payment made as a deductible item for State B tax purposes. Such steps are generally a part of the State B correlative adjustment.

199. From a practical standpoint, the implementation of MAP relief will generally require the competent authority to direct the appropriate component of the tax administration to take one or more specific actions with respect to the taxpayer, such the payment of a refund or the adjustment of the amount of tax due from the taxpayer or a related party. How this will occur will depend upon the specific unilateral procedures developed by the competent authority for this purpose, as well as the division of responsibilities and functions within the tax administration.

200. Paragraph 2 of Article 25 of the UN Model provides that any agreement reached through the MAP shall be implemented notwithstanding any time limits in the domestic law of the Contracting States, such as time limits relating to adjustments of assessments and tax refunds.

201. In practice, however, the domestic laws of certain Contracting States may limit the ability of the competent authority to implement MAP relief in disregard of domestic law time limits. As a result, some tax treaties do not contain a provision similar to the second sentence of Article 25(2).

202. Some tax treaties may, for example, provide that MAP relief will only be implemented to the extent consistent with domestic law time limits. Certain other tax treaties provide that a Contracting State will be obliged to implement a MAP agreement after a domestic law time limit has passed only if the Contracting State has been notified of the MAP case within a specified time period (for exampl

communications that do not legally require the formal use of an official language by one or both States. 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: “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. | | Within one month of Taxpayer's submission of the MAP request to State A CA. |
| | <ul style="list-style-type: none"> • In transfer pricing cases, Advise State B CA of MAP request²¹. | | Within three months of Taxpayer's submission of the MAP request to State A CA. |

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| | <p>whether unilateral relief is possible and appropriate.</p> <ul style="list-style-type: none"> • In transfer pricing cases, inform State B CA that MAP request is not accepted or that unilateral relief is possible and appropriate. | | |
| 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 and communicate all relevant information in order to allow State B CA to examine the case. | | <p>Within three month of the notification to the taxpayer that MAP request is accepted and unilateral relief is not possible and appropriate.</p> |

- Confirm receipt of State A CA request to initiate MAP discussions.
 - Preliminary review of MAP request.
 - Where necessary, request that State A CA obtain additional information from Taxpayer.
- Within one months of State B CA's receipt of State A CA's opening letter.

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| | <ul style="list-style-type: none"> • Determination by the other CA whether unilateral relief is possible and appropriate. • Where appropriate, preparation of rebuttal paper or other response to the position paper by the other CA. | not in accordance with the Convention. |
| | Negotiation between State A CA and State B CA. | |
| STAGE THREE | | |
| | <ul style="list-style-type: none"> • MAP agreement between State A CA and State B CA. • Memorialise MAP agreement in summary record. | Within 36 months of the acceptance date of Taxpayer's MAP request by State A CA. |
| | <ul style="list-style-type: none"> • Notify Taxpayer that MAP agreement has been reached and explain its terms. • Where relevant, request that Taxpayer indicate whether it accepts MAP agreement. | Within one month after MAP agreement has been memorialised. |
| Notify State A CA whether it accepts the MAP agreement. | | Within one month of notification of the MAP agreement. |
| | If Taxpayer accepts the MAP agreement, State A CA and State B CA confirm and formalise MAP agreement through exchange of letters. | Within one month of the Taxpayer's acceptance of the MAP agreement. |
| | Implementation of the MAP agreement. | No later than three months after the exchange of letters formalising the MAP agreement. |

206 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.

207. 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.

208. 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.

209. 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.

210. 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.

221. Some Contracting States may also be willing to provide relief from penalties through the MAP even where the

231. Of course, an APA will only be available to a taxpayer if a Contracting State has instituted an APA program. As with many other aspects of the MAP, Article 25 of the UN Model is silent with respect to APAs. A Contracting State that wishes to establish an APA program must accordingly develop its own procedures for the conduct of the APA program.

232. As an initial matter, a Contracting State that institutes an APA program must determine how a taxpayer requests an APA, including, for example, the format of an APA request and related documentation requirements. The Contracting State must also determine how APA requests will be processed, and, more generally, how its APA 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.²²

233. Contracting States must also jointly determine how bilateral APA negotiations will be conducted. The generally applicable MAP procedures may provide some guidance in this regard, but certain modifications or adaptations may be appropriate in light of the unique characteristics and complexity of transfer pricing cases. In particular, in developing bilateral procedures for APA negotiations, the Contracting States should take into account the specific requirements of their domestic transfer pricing laws, including, for example, their requirements with respect to documentation.

234. 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 prevent a mutual agreement

235. As noted above, the free flow of international trade and investment and the transfer of technology all play important complementary roles in the economic development process in developing countries and countries in transition. By providing legal certainty that these activities will not be subject to international double taxation, tax treaties encourage foreign investors to participate in the economic life of these countries and thereby to contribute to their growth and prosperity.

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. In the absence of a mechanism to resolve such disagreements, the certainty provided by the tax treaty may be compromised.

237. A mechanism for dispute resolution, such as the MAP provided for in Article 25 of the UN Model, is thus an essential component of any tax treaty. Certain shortcomings in the traditional Article 25 MAP, however, may make the consideration of supplementary dispute resolution mechanisms appropriate. Such a consideration will, among other things, involve a cost-benefit analysis weighing the costs of such supplementary dispute mechanisms against the broader (and

agree on a MAP resolution and the MAP case is closed without an agreement.²³ In such situations, there may be unrelieved double taxation or taxation not in accordance with the treaty.

240. The language of Article 25 similarly does not oblige the Contracting States to reach timely agreement in the MAP. Where taxation not in accordance with the treaty remains unresolved for an unreasonably long period, taxpayers may face many of the same burdens that they would face in a situation in which there is no competent authority