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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 UTUAL AGREE ENT 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 Subcommittee was also invited to "primarily focus on the specific needs and concerns of developing countries and countries in transition."

This A first draft of a Guide to the Mutual Agreement Procedure has been was prepared pursuant to that part of the mandate of the Subcommittee. It is was tabled at the Committee's meeting of 18-22 October 2010 for the sole purpose of seeking written comments.

<u>The draft so that it may behas been</u> subsequently revised by the Subcommittee and <u>shall</u> be presenteddiscussed at the 2011 meeting of the

PREFACE

1. The main purpose of this Guide is to improve the understanding and functioning of

1. INTRODUCTION AND BACKGROUND

- 1.1 The pu pose an impo tance of the mutual ag eement p oce u e
- 6. A tax treaty is an official agreement between two countries ("Contracting States") the primary purpose of which is the prevention of the international double taxation that may arise when a specific transaction or taxpayer is subject to tax under the domestic tax laws of both Contracting States. Such double taxation discourages the free flow of international trade and investment and the transfer of technology, all of which play important complementary roles in the economic development process.
- 7. A tax treaty seeks to prevent international double taxation by providing for a uniform allocation of taxing rights with respect to specific classes of income between the residence State (that is, a taxpayer's State of residence) and the source State (that is, the State where the relevant income is considered to arise). A tax treaty will further provide a method through which double taxation will be eliminated by the resident State in situations in which the treaty permits both the residence State and the source State to tax an item of income.³
- 8. For example, the interest aArticle of a tax treaty may permit interest arising in one Contracting State and paid to, and beneficially owned by, a resident of the other Contracting State to be taxed in both these States, with the tax charged in the source State limited to an agreed-upon rate. Double taxation is then eliminated by the relief from double taxation Article, under which the residence State will generally allow a deduction or credit against its tax for the tax paid to the source State, to the extent that the source State properly taxed the interest income under the treaty.
- 9. In certain cases, however, international double taxation may arise even where there is a tax treaty between two countries. Such double taxation may result, for example, from the incorrect application of the treaty by one of the Contracting States, or from differing views between the Contracting States (e.g. with respect to the the relevant facts or the characterisation of an item of income under domestic law) as to how the treaty should apply in a particular situation or context.
- 10. In order to resolve such issues, tax treaties typically provide for a mutual agreement procedure along the lines of what is provided for in Article 25 (Mutual

Where the provisions of a tax treaty permit both Contracting States (that is, the residence State and the source State) to tax an item of income, double taxation is eliminated through either the "exemption method" or the "credit method". See Articles 23A (Exemption Method) and 23 B (Credit Method) of the UN Model. Under the exemption method, the residence

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

Transfer pricing cases

19. Historically, a large number of paragraph 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.

Through the MAP, the Contracting States may reach agreement on how the test should be applied to a taxpayer's facts.

Withholding tax cases

32. Tax treaties usually permit source State taxation of dividends, interest, and royalties paid to, and beneficially owned by, a resident of the other Contracting State, but limit the tax charged by the source State to an agreed-upon percentage of the gross amount of such payments (see Articles 10 (Dividends), 11 (Interest), and 12 (Royalties) of the UN Model). The tax charged by the source State will typically take the form of a

- 36.38. 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).
- 37.39. 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.
- 38.40. 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

1.3 What is a competent autho ity?

43.45. 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

however, they should seek toappropriate opportunities for compromise in order to reach a mutual agreement that willto provide relief from double taxation.

1.3.2 Who is the competent authority?

48.50. Under subparagraph (1)(e) of Article 3 (General Definitions) of the UN Model, the definition of the term "competent authority" – that is, the designation of a governmental official, agency, or entity as a Contracting State's competent authority – is left to each of the Contracting States. In the typical case, the competent authority will be identified, for example, as "the Minister of Finance or his authorised representative" or "the Gi0.35795 81.32 Tmisent

- "authorised representative") who carries out the day-to-day functions of the competent authority.
- 54.56. Countries that have considerable pPractical experience with of the MAP process has shownve recognised that the efficiency and effectiveness of a MAP program is enhanced if the senior tax officials to whom the competent authiority 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.
- 55.57. 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.
- 56.58. 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.
- 57.59. 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.).
- 58.60. 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.
- 59.61. It is also important that the competent authority keep records of the decisions and resolutions that have been reached though 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).
- 60.62. The effectiveness of a MAP program may also be improved if the competent authority function is given a certain degree of independence from the tax officials responsible for taxpayer audits and adjustments (e.g. auditors, assessors or inspectors).

<u>Filing a waiver of domestic time limits on assessment</u>. Under the domestic laws of many States, the tax administration has a limited period of time within which it may assess tax with respect to a given taxable year (sometimes referred to as a statute of limitations on assessment). Taxpayers similarly have a limited period of time in which they may object to or otherwise challenge the actions of the tax administration in a domestic forum. In many of these States, however, the taxpayer and tax administration may agree to extend the relevant periods. This procedure may involve, for example, filing a request or a specific form with the tax administration.

<u>Submitting a protective claim</u>. In some States, taxpayers may protect their rights to certain domestic recourse procedures by filing a protective claim before any applicable deadlines. A timely claim may have the effect of keeping any applicable periods of limitations open until the claim is resolved or withdrawn. Protective claims may include, for example, a claim for refund submitted to the appropriate administrative or judicial body.

Lodging an appeal with the appropriate administrative or judicial body. In some States, taxpayers may protect their rights to certain domestic administrative or judicial procedures by lodging an appeal with the appropriate body before any applicable deadlines. As with a protective claim, a timely appeal may may have the effect of keeping any applicable periods of limitations open until the appeal is resolved or withdrawn. Examples of such an appeal may include an application to a tax administration's administrative appeals division or a petition or other challenge filed with a domestic court.

- 67.69. Because Article 25, as drafted in most treaties, does not compel the Contracting States to reach agreement in the MAP⁸, but only to use their best efforts to do so, there will on occasion be situations in which there is no MAP agreement between the Contracting States. In such a situation, a taxpayer that has not taken appropriate measures to protect its rights under domestic law will have no further recourse.
- 68-70. 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.
- 69.71. 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.
- 70.72. 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.
- 74.73. 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

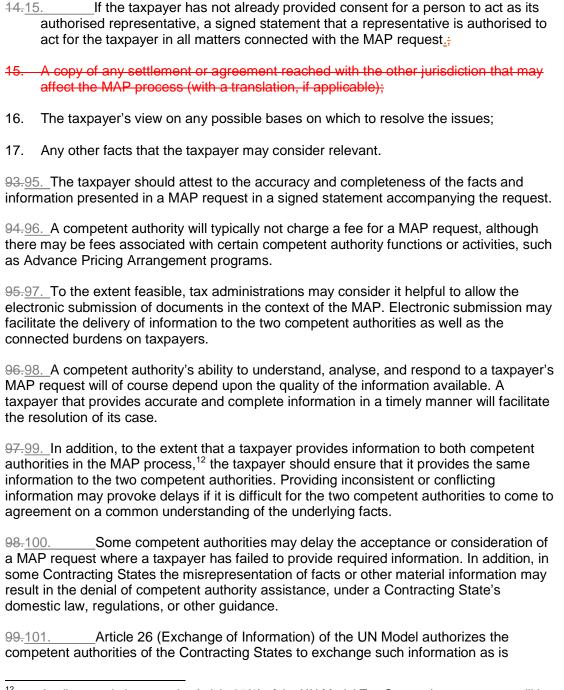
The situation is, however, different for treaties that follow alternative B of Article 25.

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

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.

82.84. 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

- 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 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);
- 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:
- 11. A schedule of the relevant time limits and statutes of limitation in each jurisdiction (whether imposed by domestic law or the tax treaty) with respect to the taxable periods for which MAP relief is sought (in cases of multiple taxpayers, a schedule for each taxpayer);
- A statement indicating whether the taxpayer has filed a notice of objection, notice of appeal, refund claim, or any other comparable document in either of the relevant jurisdictions;
- 13. A statement indicating whether the taxpayer's request for MAP assistance involves issues that are currently or were previously considered by the tax authorities of either Contracting State as part of an advance pricing arrangement, ruling, or similar proceedings;
- 14. A copy of any settlement or agreement reached with the other jurisdiction that may affect the MAP process (with a translation, if applicable);



As discussed above, under Article 25(1) of the UN Model Tax Convention, a taxpayer will in most cases make a request for MAP assistance to the competent authority of its state of residence. That competent authority will generally then itself communicate the facts and information relevant to the MAP request to the competent authority of the other contracting

necessary for carrying out the provisions of the treaty. Article 26 thus expressly authorizes the exchange of taxpayer information between competent authorities to carry out the MAP provided for by Article 25.

Paragraph 1 of Article 26 provides that any information exchanged between the competent authorities is required to be treated as secret in the same manner as if such information were obtained under the domestic laws of the respective Contracting States. Competent authorities should continually keep in mind their obligations under Article 26, which is intended to supplement the generally applicable confidentiality provisions of Contracting States' domestic tax laws.

2.3 When can a taxpaye make a AP equest?

2.3.1 When can a taxpayer first make a MAP request?

401.103. Under paragraph 1 of Article 25 of the UN Model, the triggering event that

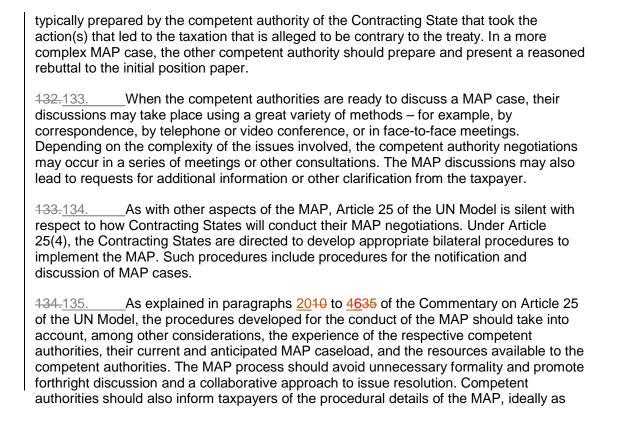
even a concluded adjustment may or may not trigger a claim for a correlative adjustment; even if it does, the latter adjustment may occur without problems. As a consequence, many competent authorities may decide that the process should not be invoked until the correlative adjustment (or other tax consequence in the second country) is involved at some point.

16. However, some competent authorities may prefer that the bilateral process be invoked earlier, perhaps at the proposed adjustment stage. Such involvement may make the process of consultation easier, in that the first country will not have an initial fixed position. In such a case, the other competent authority should be prepared to discuss the case at this early stage with the first competent authority. Other competent authorities may be

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.

<u>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?</u>

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



through a 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.

2.4.2 Other barriers to access to the MAP: fraud, gross negligence, wilful default and tax avoidance

139.140. Paragraph 3 of Article 9 is relevant in discussing barriers to MAP. That paragraph provides: The provisions of paragraph 2 [of Article 9] shall not apply where judicial. administrative or other legal proceedings have resulted in a final ruling that by actions giving rise to an adjustment of profits under paragraph 1, one of the enterprises concerned is liable to penalty with respect to fraud, gross negligence or wilful default. Under specific conditions, paragraph 2 of Article 9 obliges one Contracting 140.141. State (State A) to make a correlative adjustment with respect to a State A enterprise where the other Contracting State (State B) has made a transfer pricing adjustment with respect to a related State B enterprise. Where paragraph 3 of Article 9 applies, however, State A no longer has an obligation to make such an adjustment with respect to the State A enterprise. Paragraph 3 of Article 9 does not technically preclude access to MAP but

Paragraph 3 of Article 9 does not technically preclude access to MAP but merely removes the requirement that State A make an appropriate correlative adjustment when the conditions of the paragraph are met. State A may determine in particular circumstances that it is appropriate to consider providing MAP relief even in a case where paragraph 3 applies. Consistent with the Commentary on Article 25 noted above, many countries would consider the provision of such relief to be within the scope of, and authorized generally by, Article 25. Paragraph 93 of the Commentary on Article 9 Sstates that Member countries may consider the double penalties that apply in Article 9(3) cases to be too harsh, a factor that could make them consider MAP access potentially appropriate. In any case, this paragraph of the Commentary on Article 9 also notes that these cases "are likely to be exceptional and there would be no application of [Article 9(3)] in a routine manner".

In practice, some competent authorities have refused to provide relief where the adjustment underlying a taxpayer's MAP request is based upon an anti-avoidance provision in their countries' domestic laws (for example, a thin capitalisation provision) even where a tax convention does not provide expressly that MAP assistance will not be provided 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.

143.144. This approach may likely not lead to a satisfactory resolution. Moreover,

Some of these 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. 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?

446.147. An aspect of the MAP that is closely linked to the relationship between the MAP and domestic law¹⁹ – 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.

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?

448.149. 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.

449.150. 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.²⁰ 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.

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

uniform treatment of taxpayers (with respect to access to the MAP).

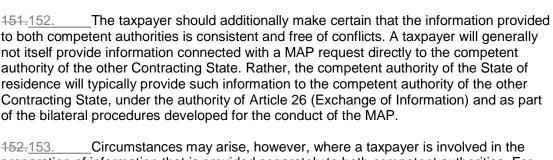
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See Articles 26 ("*Pacta sunt servanda*") and 27 (Internal law and observance of treaties) of the Vienna Convention on the Law of Treaties (United Nations, *Treaty Series*, vol. 1155, p. 331). Article 26 of the Vienna Convention provides that every 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.

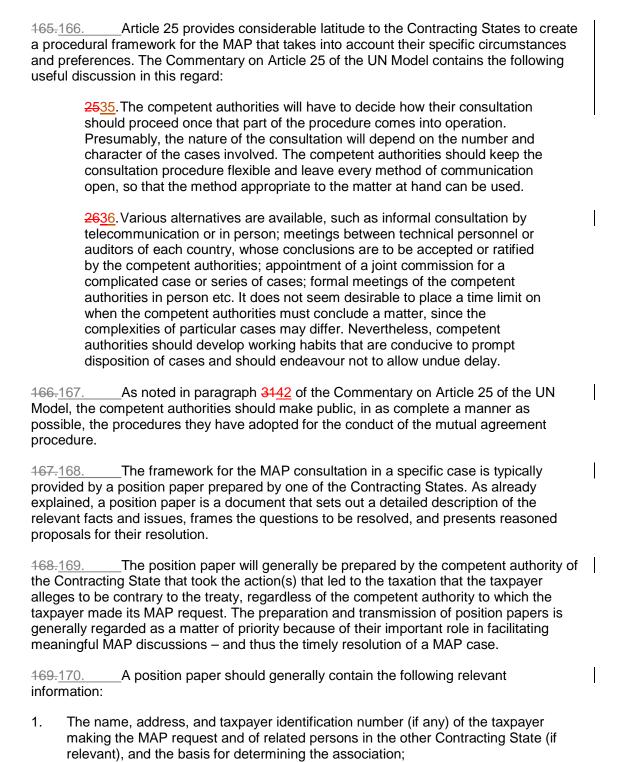
See section 1.4 above.

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

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. The competent authority may also ask the taxpayer for assistance in interpreting the information provided including: economic models and legal memoranda justifying the taxpayer's application of the arm's length standard.



- Circumstances may arise, however, where a taxpayer is involved in the preparation of information that is provided separately to both competent authorities. For example, where a MAP request regards a transaction with a related party in the other Contracting State, and the related foreign party itself makes a MAP request to the other competent authority, the taxpayer may often be involved in the preparation of information or documents that are presented to the other competent authority.
- 453.154. Certain Competent authorities Contracting States may permit taxpayers to present briefs or make presentations to both competent authorities as part of the MAP process. The material presented may in some cases also include taxpayer proposals for the resolution of a MAP case. Providing taxpayers with appropriate opportunities to present relevant information may help both competent authorities to reach a common understanding of the facts and issues, especially in particularly complex MAP cases, and thereby improve the functioning of the MAP.
- In general, taxpayers have no further direct involvement in the consultation between the two competent authorities. Many Contracting States regard MAP consultations as a confidential, government-to-government process in which taxpayer participation would be barred or otherwise inappropriate.
- 455.156. In addition, the MAP is a bilateral process in which both parties share common interests: the resolution of international double taxation and the correct interpretation and application of the tax treaty. A taxpayer's main interest, in contrast, will generally be to minimize, over time, its worldwide tax liability. Direct taxpayer involvement in competent authority negotiations could thus reasonably be expected to extend or distort the MAP process.
- 456.157. 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.



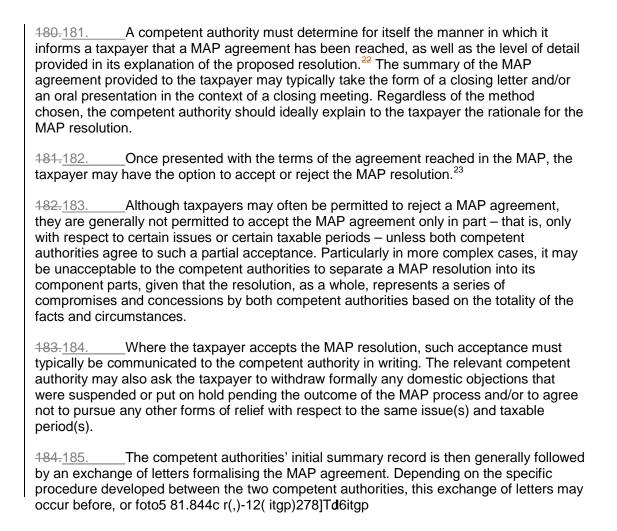
2. Contact information for the competent authority official in charge of the MAP case;

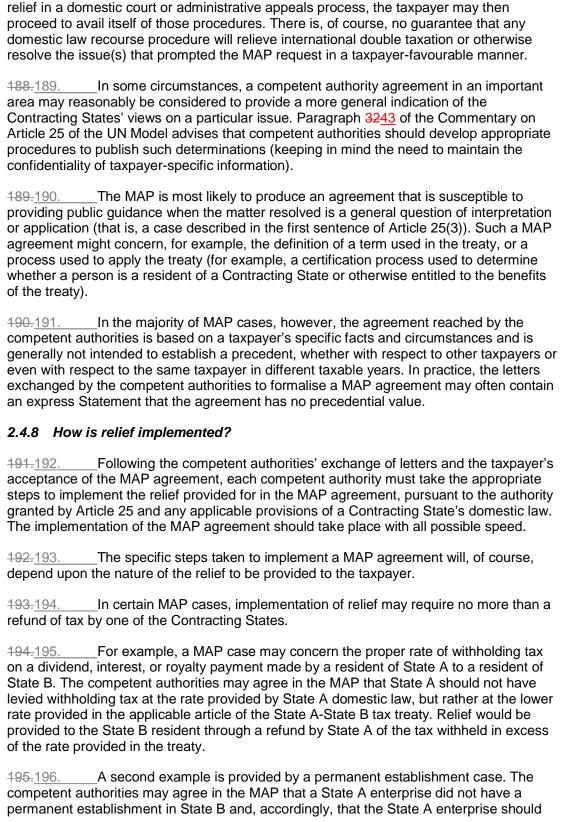
- 3. A summary of the issue(s) presented, the relevant facts, and the basis for the tax administration action that is the subject of the MAP request;
- 4. The taxation years or periods involved;
- 5. The amount of income and the relevant tax for each taxable year, if applicable;

- 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. 174.	_In practice,	compet	ent autho	orities may	/ condu	ıct their di	scussions	and
consultations	using many	different	means,	including I	letters,	facsimiles	s, electroni	ic mail,
telephone and	d video confe	erences,	and face	e-to-face m	neeting	S.		

174.175.





not have been subject to State B tax with respect to certain business income, under the business profits article of the State A-State B tax treaty. Relief would be provided to the State A enterprise through a refund of the State B tax on the relevant business income.

196.197. ____In other MAP cases, the competent authority of one Contracting State

Action				
Taxpayer	State A Competent Authority (Taxpayer's State of Residence)	State B Competent Authority	Target Time Frame or Deadline	

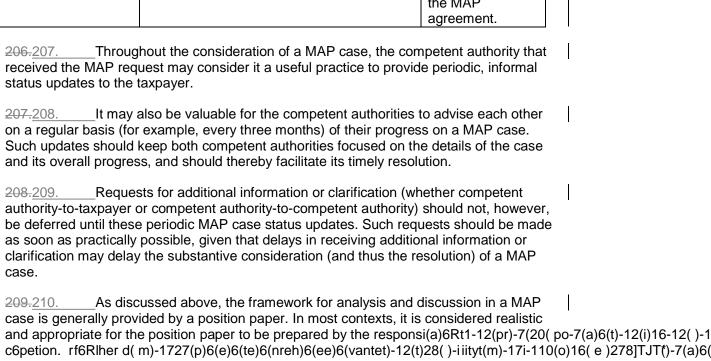
Determine MAP request accepted. If case accepted. If case accepted determine wound appropriate. Notify Taxy whether MA request will accepted an whether unil relief is possisted appropriate. In transfer cases, inform B CA that M request is not accepted or unilateral relipossible and appropriate.	epted, hether ief is d payer P be d ateral sible and pricing m State AP ot that ief is d	Within three months of Taxpayer's submission of all information required by State A CA to determine whether the MAP request will be accepted and whether unilateral relief is possible and appropriate.
• If no unilate relief possib propose to S	eral le,	Within three month of the notification to the
CA to initiate discussions opening lette State B CA a communicat relevant info in order to a State B CA a examine the	e MAP - issue er to and e all rmation llow co case.	taxpayer that MAP request is accepted and unilateral relief is not possible and appropriate.
	 Confirm receipt of State A CA request to initiate MAP 	

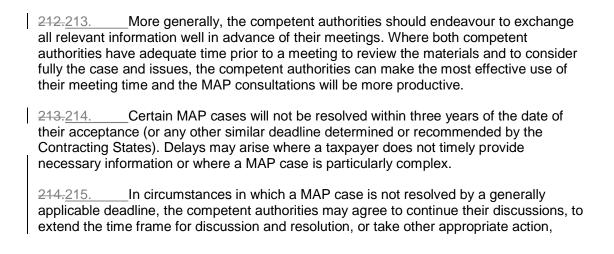
Within three

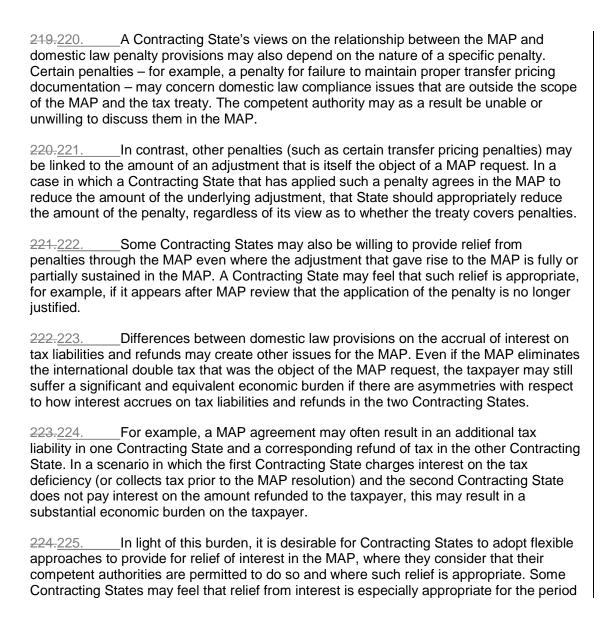
	riotily State / Cort	***************************************	
v	vhether request to	months of State B	
ir	nitiate MAP	CA's confirmation	
d	liscussions is		
a	ccepted.		
If State B CA agrees to I	MAP discussions,	Within six months	
the CA of the Contractin	g State that	of State B CA's	
initiated the adjustment	or, in the absence	agreement to	
of an adjustment, of the	Contracting State	enter into MAP	
the taxation of which is o	considered not in	discussions.	
accordance with the Cor	nvention (whether		
State A CA or State B C	A) analyses and		
evaluates the MAP case	and prepares a		
position paper for the otl	her CA.		
 Review of MAP case b 	y the other CA.		
Where necessary, the	other CA may		
•	_		
•	•		
in accordance with the C	Convention, provide		
	• •		
Determination by the o	ther CA whether		
		AG(<i>6</i>)1690°B67(0a.)161.7 2 6498	516733B4#862:5667a1 cc.693T
_	If State B CA agrees to the CA of the Contractin initiated the adjustment of an adjustment, of the the taxation of which is accordance with the Constate A CA or State B Consition paper for the other than the case of MAP case be where necessary, the request that the CA of the that initiated the adjustment, State where the taxation in accordance with the Candditional information or the Determination by the other candidates.	whether request to initiate MAP discussions is accepted. If State B CA agrees to MAP discussions, the CA of the Contracting State that initiated the adjustment or, in the absence of an adjustment, of the Contracting State the taxation of which is considered not in accordance with the Convention (whether State A CA or State B CA) analyses and evaluates the MAP case and prepares a position paper for the other CA. Review of MAP case by the other CA. Where necessary, the other CA may request that the CA of the Contracting State that initiated the adjustment or, in the absence of adjustment, of the Contracting State where the taxation is considered not in accordance with the Convention, provide additional information or explanation.	whether request to initiate MAP discussions is accepted. If State B CA agrees to MAP discussions, the CA of the Contracting State that initiated the adjustment or, in the absence of an adjustment, of the Contracting State the taxation of which is considered not in accordance with the Convention (whether State A CA or State B CA) analyses and evaluates the MAP case and prepares a position paper for the other CA. • Where necessary, the other CA may request that the CA of the Contracting State that initiated the adjustment or, in the absence of adjustment, of the Contracting State where the taxation is considered not in accordance with the Convention, provide additional information or explanation.

Notify State A CA

Notify State A CA whether it accepts the MAP agreement.			Within one month of notification of the MAP agreement.
	If Taxpayer accepts the State A CA and State formalise MAP agreer exchange of letters.	B CA confirm and	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.







227.228. A requirement to pay tax prior to a MAP resolution may also impose significant costs on a taxpayer. Even where the competent authorities eliminate double

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take into account the specific requirements of their domestic transfer pricing laws, including, for example, their requirements with respect to documentation.

234.235. Although APA negotiations are conducted pursuant to the general authority of the MAP article, the Contracting States must also determine the interaction of their

resolution and the MAP case is closed without an agreement.²⁶ In such situations, there may be unrelieved double taxation or taxation not in accordance with the treaty.

240.241. 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 agreement in the MAP.

241.242. This inability to ensure a final (or timely) resolution of MAP cases is one of the primary obstacles to an effective MAP. When a taxpayer or a tax administration is unsure that a matter will be resolved through the MAP, it may be hesitant to commit time and resources to seeking a MAP resolution. In addition, a competent authority may not take all possible steps to find a resolution through the MAP where there is no obligation to do so and no mechanism in place to break a stalemate in MAP negotiations.

243. __As mentioned in paragraph 36 of the Commentary on Article 25, in light of these shortcomings of the MAP, some tax administrations consider that the MAP could be improved through the addition of an arbitration provision as a tool to ensure that the competent authorities are able to reach an agreed solution to a taxpayer's case. In light of these shortcomings of the MAP, Article 25 (Alternative B) of the UN Model provides for a mandatory arbitration provision designed to ensure that the competent authorities are able to reach an agreed solution to a taxpayer's case. [GW/CD] Resolution of tax disputes by way of mandatory binding arbitration would eliminate double taxation risk for foreign investors and facilitate international trade. Mandatory binding arbitration also requires less human resources of the competent authorities and thus facilitates tax administration. Contracting States are urged to include provisions allowing mandatory binding arbitration in Article 25 of their double taxation agreements.[ICC]The Commentary on paragraph 5 of Article 25 (Alternative B) of the UN Model as well as the Annex on that Commentary