

MUTUAL AGREEMENT PROCEDURE (MAP) GUIDELINES

ISSUED BY

INLAND REVENUE DEPARTMENT OF SRI LANKA

1. INTRODUCTION

The Article on Mutual Agreement Procedure (MAP) in Sri Lanka's Tax Treaties allows the Sri Lankan Competent Authority (CA) to interact with CAs of Treaty Partners with the intent to resolve international tax disputes involving double taxation and inconsistencies in the interpretation and application of a Tax Treaty.

The purpose of these guidelines is to provide guidance on obtaining assistance from the Sri Lankan CA to persons that fall within the scope of an effective Tax Treaty that Sri Lanka has with its Treaty Partners. This assistance is provided to taxpayers in order to try to resolve international tax disputes involving double taxation and inconsistencies in the interpretation and application of a Tax Treaty. List of Sri Lanka treaty partners available at www.ird.gov.lk

2. ADMINISTRATION AND PROCEDURE

2.1 WHO MAY APPLY FOR COMPETENT AUTHORITY ASSISTANCE

Where a Sri Lankan resident or in some cases a national considers that the actions of either or both Sri Lanka's and its Treaty Partner's tax administrations result or will result in taxation not in accordance with the provisions of the Tax Treaty, the person may request Sri Lanka's CA assistance under the MAP Article of an applicable Tax Treaty.

2.2 TYPICAL SCENARIOS REQUIRING COMPETENT AUTHORITY ASSISTANCE

A Sri Lankan resident may seek assistance from the Sri Lankan CA in case of Treaty Partner-initiated adjustments and also if the resident believes that a Sri Lanka-initiated adjustment results or will result in taxation not in accordance with the Tax Treaty. Examples of taxation not in accordance with a Tax Treaty that may warrant a request for assistance to the Sri Lankan CA include but not limited to:

➤ Transfer Pricing

A taxpayer resident in Sri Lanka is subject to additional tax because of a transfer pricing adjustment to the price of goods or services transferred to or from a related party in a Treaty Partner country. A transfer pricing adjustment may also involve the adjustment of other inter-related party transactions such as cost contribution arrangement and financial arrangement or such other transactions involving transfer pricing adjustment. In any of these transfer pricing adjustments, the Sri Lankan taxpayer may request that the Sri Lankan CA reduce or withdraw the adjustment and/or that the CA of the Treaty Partner allow a corresponding adjustment to the income of the related party to prevent economic double taxation.

➤ **Resident Status**

A Sri Lankan resident taxpayer is also considered to be a resident of a Treaty Partner under that country's domestic law, and each country asserts that the taxpayer is a resident of its jurisdiction for purposes of the Tax Treaty. If unresolved, the taxpayer could be subject to tax on the same income in both countries. A request for CA assistance would initiate discussions between the CAs regarding the proper application of the tiebreaker rules contained in the Resident Article of the Tax Treaty. The taxpayer should approach the CA of the country in which the taxpayer asserts residency.

➤ **Withholding Tax**

A withholding tax is levied beyond what is allowed within an applicable Tax Treaty by a Treaty Partner on a payment to a Sri Lankan resident. The Sri Lankan resident taxpayer may request the Sri Lankan CA to address the taxation not in accordance with the Tax Treaty with the CA of the Treaty Partner.

➤ **Permanent Establishment**

A permanent establishment, e.g. a branch of a Sri Lankan resident taxpayer in a Treaty Partner country is subject to additional tax because of an adjustment by that Treaty Partner country of the income allocated to the branch. The Sri Lankan resident taxpayer may request the Sri Lankan CA to prevent double taxation by allowing an increased foreign tax credit or exemption or by seeking the Treaty Partner CA's agreement to give relief from the adjustment.

A Sri Lankan resident taxpayer subject to tax in Sri Lanka on income, including income from carrying on a business in a Treaty Partner country, is taxed in the Treaty Partner country on the business income earned in the Treaty Partner country despite not having a permanent establishment in that country under the Tax Treaty. The taxpayer may request the Sri Lankan CA to address the issue of taxation not in accordance with the Tax Treaty with the CA of the Treaty Partner.

➤ **Characterisation or Classification of Income**

Where there is uncertainty whether the Tax Treaty covers an item of income, or where there is uncertainty of the characterisation or classification of an item of income arising in the other jurisdiction, a taxpayer may approach the Sri Lankan CA for clarification.

2.3 TIME LIMITS FOR REQUESTING ACCESS TO MAP

The time limit for presenting a case for CA assistance depends upon the specific terms of the particular Tax Treaty under which the MAP is invoked. Therefore, in every case the relevant Tax Treaty should be consulted.

Where the time limit for presenting a case to invoke MAP is not specified in the relevant Tax Treaty, the Sri Lankan CA will follow the time limit specified under the Article 25 (MAP) of the OECD Model Tax Convention on Income and on Capital (i.e. within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the convention).

2.4 PRE-FILING MEETING

A request for a pre-filing meeting prior to making a formal request for MAP can be made and the procedures are outlined as follows:

- all requests for a pre-filing meeting should be directed to the International Tax Policy unit;
- the relevant unit, and the relevant Department of IRD may participate in a pre-filing meeting; and
- if the outcome of a pre-filing meeting merits consideration for MAP, the International Tax Policy unit shall inform the taxpayer to submit a formal request.

2.5 SUBMITTING A FORMAL REQUEST

All formal requests for MAP should be made in writing and addressed to:

The Competent Authority

Commissioner General of Inland Revenue

Inland Revenue Department

14th Floor,

Sir Chittampalam A Gardiner Mawatha

P.O. 515, Colombo 2 - Sri Lanka

A request for CA assistance should contain all relevant information which include:

- the name, address and Taxpayer Identification Number of the Sri Lankan taxpayer;
 - the name of the Treaty Partner tax administration involved;
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- the Tax Treaty Article(s) which the taxpayer asserts is not being correctly applied by Sri Lanka or the Treaty Partner, and the taxpayer's interpretation of the application of the article;
- the name, address and, if known, the tax reference number of any related Treaty Partner taxpayer involved;
- the relationship between the Sri Lankan taxpayer and any related Treaty Partner taxpayers involved. (Taxpayers should also keep the Sri Lankan CA informed of any changes in these relationships that occur after the request has been filed.);
- the taxation years or periods involved, the amount of income and tax in dispute together with copies of the notices of assessment;
- a summary of the facts and an analysis of the issues for which CA assistance is requested, including any specific issues raised by the Treaty Partner tax administration or IRD affecting the Sri Lankan taxpayer and the related amounts;
- a statement indicating whether the taxpayer has filed a notice of objection or a notice of appeal;
- if consent has not already been provided for a person to act as an authorised representative, a signed statement that the representative is authorised to act for the taxpayer in making the request;
- a copy of any settlement or agreement reached with the Treaty Partner tax administration which may affect the MAP process;
- any other relevant facts.
- The request should be signed by the taxpayer, or by its authorised representative, confirming the accuracy and completeness of the facts and information presented in the request. The taxpayer is responsible for the completeness and accuracy of the information included in the request. The Sri Lankan CA may deny any request where the taxpayer has failed to provide complete and accurate information or has made any misrepresentation.

2.6 REVIEW OF THE REQUEST

After receiving a request for MAP, the International Tax Policy Unit will evaluate the said request. Where there are deficiencies in the request, the International Tax Policy Unit shall request the taxpayer to take remedial action.

The Sri Lankan CA will accept a request for assistance if:

- the issue or transaction relates to a foreign country with which Sri Lanka has a Tax Treaty;
 - it is evident that the actions of one or both countries have resulted or will result in taxation not in accordance with the Tax Treaty;
 - the taxpayer notifies the Sri Lankan CA within the acceptable time after an action results in taxation not in accordance with the provisions of the applicable Tax Treaty;
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- the issue is not one that the Sri Lankan and/or the Treaty Partner CA have decided, as a matter of policy, not to consider.

The International Tax Policy Unit may request the taxpayer to submit additional documents necessary for the purpose of the MAP with time specified in the request.

2.7 DENIAL OF ACCESS TO MAP

The CAs of Sri Lanka can deny access to MAP in some situations or in certain particular cases. Such situations and particular cases are as follows:

- a) **Delayed MAP Applications** - If the taxpayers make a MAP application to the CAs of Sri Lanka or to the CAs of the treaty partners after the expiry of the time period specified in the Article relating to MAP (corresponding to Article 25(1) second sentence of the OECD Model Tax Convention) of the relevant DTAAs, the CAs of Sri Lanka would not provide access to MAP. This time period in most treaties is within three years from the first notification of the order/action of tax authorities that results or will result in taxation not in accordance with the relevant DTAAs.
 - b) **Taxpayer's Objection Not Justified** - If the CAs of Sri Lanka come to a conclusion that the objection raised by the taxpayer on the action taken by tax authorities is not justified, they can deny access to MAP. However, before taking a decision to deny access to MAP in such situations, the CA of Sri Lanka having jurisdiction over the case would discuss the matter with the taxpayer and the CA of the treaty partner. However, such consultation shall not be interpreted as consultation as to how to resolve the case.
 - c) **Incomplete MAP Applications/Documents/Information** - When an Sri Lankan taxpayer makes a MAP application to Sri Lankan CA, it is expected to be complete in all respects. If the CAs of Sri Lanka point out some errors or defects in the application or ask for additional information/documents, the Sri Lankan taxpayer should remedy the errors/defects and should provide the information/documents within a reasonable time period.
 - d) **Request and obtained Private ruling** - The CAs of Sri Lanka shall not provide access to MAP to an Sri Lankan taxpayer who has already obtained a Private ruling from the IRD and such ruling covers the issues that are sought to be included in the MAP application.
 - e) **Tax Appeal Commission (TAC)** - The TAC is an independent statutory dispute resolution body. The process of settlement of disputes by TAC is independent from the audit and examination functions of tax authorities. It is a voluntary process and a taxpayer has to apply for a settlement of its disputes. Once the application is accepted, the TAC examines all aspects of the dispute and comes out with a settlement order. If the TAC issues a settlement
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order, the same is binding on both the taxpayer and the tax authorities. The CAs of Sri Lanka shall not provide access to MAP to a Sri Lankan taxpayer who has already obtained a settlement order from the TAC and such order covers the issues that are sought to be included in the MAP application.

In addition to the situations and particular cases at (a) to (e) above, it is clarified **that no MAP access shall be provided in respect of issues that are purely governed Sri Lankan domestic law** and arise due to the implementation of Sri Lankan domestic legal provisions.

2.8 NOTIFICATION OF NON-COMMENCEMENT

The International Tax Policy Unit shall notify the taxpayer when a proposal for MAP is not to be initiated with the CA of the Treaty Partner and provide reasons for the rejection of the taxpayer's request.

3. ROLE OF TAXPAYERS IN MAP PROCESS

MAP negotiations between the Sri Lankan CA and the CA of the Treaty Partners are a government-to-government process in which there is generally no direct taxpayer involvement. Therefore, taxpayer involvement in the MAP is limited to presenting its views and assisting in the fact-finding without participating in the negotiation process. However, taxpayers may be invited to make a presentation before the CAs, where appropriate, to ensure a common understanding of the facts of a particular case.

3.1 RESPONSIBILITIES OF TAXPAYERS

Taxpayers are expected to cooperate fully with the Sri Lankan CA by providing information and documents when requested.

Once a MAP request has been accepted, the taxpayer is responsible for supplying the Sri Lankan CA with complete and accurate information required to resolve the case. The onus is on the taxpayer to keep the Sri Lankan CA informed of all material changes in the information or documentation previously submitted as part of, or in connection with, the request, as well as new information or documentation that becomes known or is created after the request is filed and which is relevant to the issues under consideration.

Without proper information and documentation, CAs may be unable to resolve disputes expeditiously and the risk of unrelieved double taxation increases. Where a request also involves a related Treaty Partner taxpayer making a request to the CA of the Treaty Partner Country, the taxpayers should ensure that the same information is provided to both CAs at the same time.

A taxpayer's failure to cooperate with the Sri Lankan CA during any part of the MAP process may have direct consequences on whether relief can be provided under the MAP. Specifically, the Sri Lankan CA may request additional information beyond that which was requested during an audit, and may also request information that was requested but not provided during an audit. It is to the taxpayer's benefit to be fully cooperative and transparent to ensure an efficient MAP process. The timely provision of requested information is essential to enable the CAs to reach an equitable and expeditious conclusion.

Where the failure to provide the requested information within a reasonable time hinders the Sri Lankan CA's to perform its duties in an efficient and effective manner, it may lead to a denial of CA assistance or the Sri Lankan CA being unable to reach a mutual agreement with the CA of a Treaty Partner.

3.2 CONFIRMATION BY TAXPAYER BEFORE AGREEMENT

Where it is recognised that an Agreement will be reached with the CA of the Treaty Partner, International Tax Policy Unit shall inform the taxpayer of the contents of the proposed Agreement in writing. The taxpayer shall confirm in writing his acceptance.

The CA of Sri Lanka shall reach an Agreement with the CA of the Treaty Partner after confirmation of the taxpayer's acceptance of the proposed Agreement.

A taxpayer cannot accept the terms of an agreement for only some issues or taxation years involved, since the original request by the taxpayer would have asked for assistance in respect of all issues and taxation years involved and the CAs would have considered all issues and years in the negotiations.

If a taxpayer is not satisfied with the agreement negotiated by the CA, the taxpayer may reject it. If this occurs, the CAs will consider the case closed and advise the taxpayer accordingly.

4. NOTIFICATION OF AN AGREEMENT

Where Agreement has been reached in MAP, the International Tax Policy Unit shall notify the taxpayer in writing of the date and contents of the said Agreement. Likewise, where the MAP has not reached an Agreement, International Tax Policy Unit shall also notify the taxpayer.

5. TERMINATION

The Sri Lankan CA reserves the right to propose to the CA of the Treaty Partner that MAP process may be terminated under the following circumstances:

- when the subject for MAP is not within the scope of MAP under the applicable Tax Treaty;
 - when the application for MAP or the attachments contains incorrect information;
 - when the taxpayer does not provide the documents necessary for MAP;
 - when retrieval of documents necessary for MAP is not possible due to lapse of time;
 - when the taxpayer does not accept the proposed agreement reached by the CAs;
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- when it is recognized that the continuation of MAP will not reach any agreement; and
- any other reasons not aforementioned.

Where the CA of the Treaty Partner has accepted the proposal from the Sri Lankan CA described in paragraph to terminate the MAP, the International Tax Policy unit shall notify the taxpayer that MAP has been terminated.

Likewise, where the Sri Lankan CA has accepted a proposal from the CA of the Treaty Partner to terminate the MAP, the International Tax Policy unit shall notify the taxpayer that MAP has been terminated.

6. WITHDRAWAL OF A REQUEST

A taxpayer can withdraw its request for MAP at any time before a MAP Agreement has been reached.

Withdrawal of a request for MAP shall be made in writing, stating reasons, to the International Tax Policy Unit with a copy of the request presented at the same time to the International Tax Policy unit.

After receiving the written confirmation for a withdrawal, the IRD shall notify the CA of the Treaty Partner of the termination of MAP by the taxpayer.

7. INTERACTION BETWEEN MAP AND DOMESTIC APPEAL PROCESS

Presenting a case to the Sri Lankan CA to invoke MAP will not deprive a person from its right for Administrative Review under Section 139 of Inland Revenue Act, No. 24 of 2017 (IR Act) and its amendments. The usual procedures for Administrative Review under the IR Act shall apply. However, while the domestic legal remedies are still available, the Sri Lankan CA will require that the taxpayer agrees to the suspension of these remedies if MAP request is accepted.

8. CONFIDENTIALITY OF TAXPAYER'S INFORMATION

All information obtained or generated during the MAP process is protected by the confidentiality provisions of the IR Act and the provisions of the applicable Tax Treaty.

The Sri Lankan CA is committed to ensuring confidentiality regarding taxpayer information under the Tax Treaty and the respective laws.

FURTHER INFORMATION

For more information and enquiries, please contact:

The International Tax Policy Unit

Inland Revenue Department

14th Floor,

Sir Chittampalam A Gardiner Mawatha

P.O. 515, Colombo 2 - Sri Lanka

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