

MUTUAL AGREEMENT PROCEDURE GUIDELINES

What is MAP?

Mutual Agreement Procedure (MAP) is a dispute resolution facility provided under the MAP article in Avoidance of Double Taxation Agreements (ADTAs) signed by Brunei Darussalam. Under this facility, upon eligible requests from taxpayers, Ministry of Finance (MOF) as the competent authority representative of Brunei Darussalam negotiate with the relevant foreign competent authority (“CA”) to resolve disputes with regards to the application of the ADTA. MAP can be negotiated bilaterally or multilaterally subject to the tax treaty being referred to.

Why apply MAP?

Where a person considers that the actions of one or both of the Contracting States (Brunei Darussalam and Treaty Partner) result or will result for him/her in taxation not in accordance with the provisions of the DTA Agreement signed by both countries, he/she may, irrespective of the remedies provided by the domestic law of those Contracting States, present his case to the competent authority of the Contracting State of which he is a resident. The case must be presented within certain years (mentioned in the DTA agreement) from the first notification of the action resulting in taxation not in accordance with the provisions of the DTA Agreement.

Who can apply MAP?

MAP is available to:

- Taxpayer who is a resident in Brunei Darussalam
- Taxpayer who is not resident in Brunei Darussalam but has a subsidiary or branch operating in Brunei Darussalam. These taxpayer however will have to apply for MAP in jurisdiction in which it is a tax resident and in which Brunei Darussalam have a ADTA with.

Examples on who can apply MAP

A Brunei Tax resident company which have overseas branch in a DTA jurisdiction can apply to MOF for a MAP concerning its overseas branch's affairs in that DTA jurisdiction.

A foreign company which have branch operating in Brunei can apply for MAP to the CA of the jurisdiction in which it is a tax resident. Its branch operating in Brunei will then have to inform MOF of the MAP application.

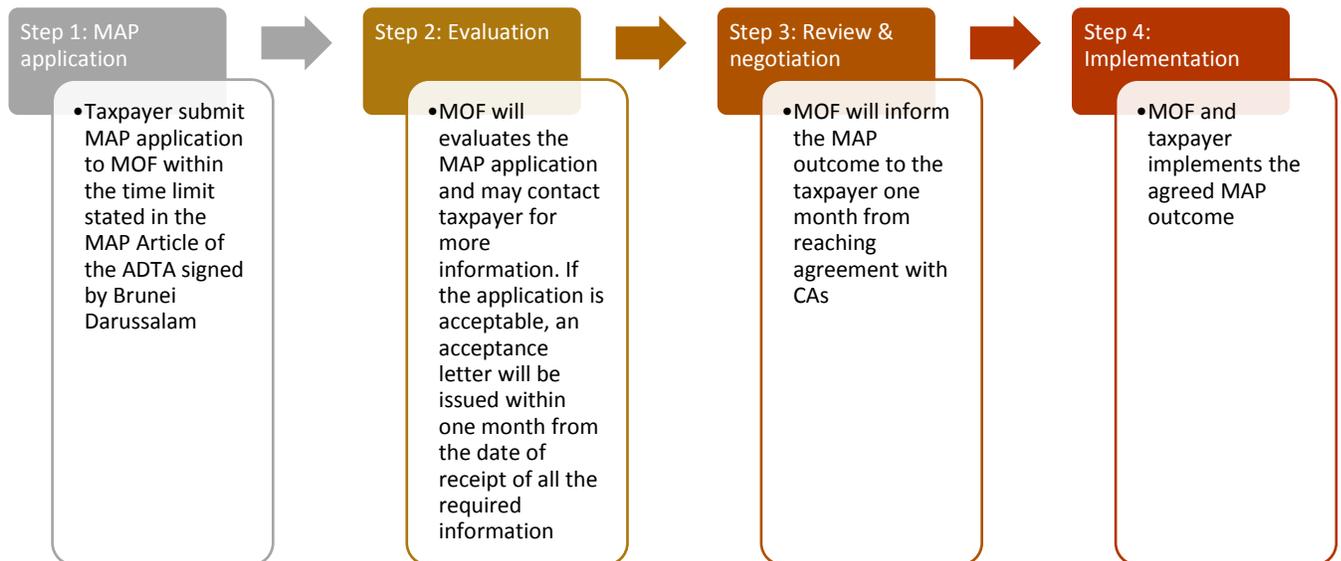
When to apply for MAP?

Taxpayers should only initiate MAP when double taxation has occurred or is certain that double taxation will occur. Double taxation should not be just a possibility, such as the mere occurrence of audit or examinations. Taxpayers may seek resolution on double taxation issues that recur over multiple years of assessment, subject to the time limits provided in the relevant ADTA. Failure to initiate MAP within the time limit specified in the MAP article of the relevant ADTA (e.g. three years) may result in the CAs rejecting the MAP request.

How to apply for MAP?

The four-step MAP process when applying for MAP is as follows:

Four-step MAP process



Guidance on the information to submit

- Taxpayer's name, address, tax identification number (ROC registration number), contact details and main business activities;
- Letter of authorization (Click here for sample) stating the engagement of tax agents or other representatives to act for the taxpayer (where applicable);
- The name of the Treaty Partner tax administration involved;
- The specific DTA including the provision(s) of the specific article(s) which the taxpayer considers is not being correctly applied;
- The relevant facts of the case including any documentation to support these facts, the taxation years or period involved and the amounts involved;
- Analysis of the issue(s) involved, including taxpayer's interpretation of the application of the specific DTA provision(s), to support the claim that the provision of the specific DTA is not correctly applied, together with relevant documentation (e.g. copies of tax assessments, audits conducted by the tax authorities leading to the incorrect application of the DTA provision);
- Whether the MAP request was also submitted to the CA of the treaty partner. If yes, a copy of that submission is required unless the content of both MAP submissions are exactly the same;
- Whether the taxpayer has pursued domestic remedies such as tax tribunals or courts in the foreign jurisdiction. If yes, a copy of the decision is to be provided;
- Whether similar issue(s) has been previously dealt with in an advance ruling or by any tax tribunal or court. If yes, a copy of these rulings or decisions should be provided where relevant and available;

- How the taxpayer has reflected the issue(s) in its Brunei income tax return (e.g. income not brought to tax, foreign tax credit claimed);
- A statement confirming that all information and documentation provided in the MAP request is accurate and that the taxpayer will assist the CA in its resolution of the issue(s) presented in the MAP request by furnishing any other information or documentation required by the CA in a timely manner; and
- A statement indicating whether the taxpayer has filed a notice of objection or a notice of appeal.

MAP application

Taxpayers are to send their MAP application to:

Director
Revenue Division
Ministry of Finance
Ministry of Finance Building
Commonwealth Drive BB3910
Brunei Darussalam

Alternatively, the MAP application can be submitted electronically to revenue@mof.gov.bn

Time limits for requesting access to MAP

The time limit for presenting a MAP application to CA depends on the terms of each tax treaty in which MAP is made possible.

If the time limit for presenting a MAP application is not specified in the relevant tax treaty, CA will follow the time limits specified in Article 25 on MAP of the OECD Model Tax Convention on Income and on Capital in which in this case is within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the convention.

In cases which involves adjustment of tax or income as a result of audit assessment, taxpayers are encouraged to notify MOF of its intention to request for MAP to CA as soon as the Notice of Assessment is issued or at the same time when the taxpayer files an appeal.

Acceptance of a MAP application

The acceptance of a MAP application is at the discretion of the CAs. MOF will consider taxpayers' request for a MAP based on the merits of each case. (For example, CA itself not able to arrive at a satisfactory solution)

Taxpayers must also recognise that if they choose to accept a settlement with a foreign CA, any unprejudiced negotiation between MOF and the foreign CA to eliminate double taxation arising from the action of the jurisdiction that imposed the taxation not in accordance with the DTA could be challenging.

The MAP does not deprive taxpayers of other remedies available under their respective domestic tax law. Taxpayers should inform MOF and the relevant foreign CA if the matter is adjudicated through any legal or judicial proceedings while the MAP process is still ongoing. The CAs will discuss and decide if the MAP should continue, cease or be suspended. Where the matter has been subjected to litigation and determination by the Brunei tribunals and courts, MOF is unlikely to depart from the determination of the Brunei tribunals and courts.

Taxpayer is responsible for the completeness and accuracy of the information included in the request. MOF may deny any MAP application if the taxpayer failed to provide complete and accurate information or has made any misrepresentation.

For cases where MAP application is rejected, MOF will notify taxpayer on the rejection and provide reasons on the rejection of the MAP application.

Criteria for MAP application acceptance

MAP application will only be accepted if

- The issue or transaction relates to a foreign country with which Brunei has a tax treaty;
- It is evident that the actions of one or both countries resulted or will result in taxation not in accordance with the tax treaty;
- The taxpayer notifies MOF within the acceptable time after an action results in taxation not in accordance with the provisions of the applicable tax treaty; and
- The issue is not one that Brunei and/or the treaty partner CA have decided, as a matter of policy, not to consider

Resolution of a MAP case

Upon accepting a MAP application, MOF will engage the relevant foreign CA to discuss the MAP case. MOF will also apply its best efforts to bring every case to closure in a prompt, efficient and effective manner. MOF may request the taxpayer to submit additional documents necessary or invited to make a presentation to the CAs for the purpose of the MAP.

While MOF works to achieve timely resolution of the MAP case, the complexity of issues involved in each case will determine the actual time needed to resolve the case. In general, MOF aims to resolve a MAP case within 24 months from receiving the taxpayer's complete application.

Termination of a MAP case

MOF reserves the right to propose to the CA of the treaty partner to terminate MAP cases process. A MAP Case can 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;
- 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 MOF to terminate MAP or vice versa, MOF will notify the taxpayer that MAP has been terminated.

Withdrawal of a MAP request

Taxpayer can withdraw its MAP request any time during MAP process and before a MAP agreement has been reached. Any MAP request should be made in writing to MOF with reasons on the withdrawals. MOF will inform CA of the treaty partner on the MAP termination by the taxpayer.

Implementation

When an outcome is reached between MOF and the relevant foreign CA, MOF will contact and inform in writing the taxpayer within one month of reaching agreement to discuss the details and implementation of the agreement.

The taxpayer will have to decide and inform in writing whether the agreed outcome is acceptable. The taxpayer is not obliged to accept the outcome agreed between the CAs. It may reject the agreed outcome. A taxpayer however are not allowed to choose which part of agreed outcome to be accepted as the MAP assistance is originally intended for the whole issues requested by the taxpayer.

Unless the taxpayer rejects the outcome, MOF and the relevant foreign CA will proceed to exchange agreement to conclude the MAP. However if the outcome is rejected, CA will then consider the case closed and will advise the taxpayer accordingly.

If any interest or penalties have been imposed in a jurisdiction in connection with the taxation that is the subject of the MAP, the MAP agreement may address whether any refund of such interest or penalties should appropriately be made.

MOF will take the necessary action to put into effect the results as required by the Agreement, in accordance with the applicable tax treaty.

Confidentiality of taxpayer's information

All information obtained or generated during the MAP process is protected by the confidentiality provisions of the Income Tax Act (Chapter 35) and the provisions of the applicable tax treaty. MOF is committed to ensure confidentiality with regards to taxpayer information under the tax treaty and the respective laws.

Further information

For more information and enquiries, please send to the following address:

Director
Revenue Division
Ministry of Finance
Ministry of Finance Building
Commonwealth Drive BB3910
Brunei Darussalam

For more information on Brunei Darussalam's MAP profile, please visit MOF website.

For flowchart of Brunei Darussalam's MAP process, please visit MOF website.