

MUTUAL AGREEMENT PROCEDURE GUIDELINES

BRUNEI DARUSSALAM
MINISTRY OF FINANCE AND ECONOMY

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1 What is MAP?

- 1.1 Mutual Agreement Procedure (MAP) is a dispute resolution facility provided under the MAP article in Avoidance of Double Taxation Agreements¹ (DTA) signed by Brunei Darussalam. Under this facility, upon eligible requests from taxpayers, Ministry of Finance and Economy (MOFE) as the Competent Authority (CA) representative of Brunei Darussalam negotiates with CA of the treaty partner to resolve disputes with regards to the application of the DTA. Usually, a MAP case involved two CAs but it is possible for MOFE to enter into a multilateral MAP involving three or more CAs which means MAP can be negotiated bilaterally or multilaterally subject to the tax treaty being referred to.

2 Why apply MAP?

- 2.1 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 signed by both Contracting States, he/she may, irrespective of the remedies provided by the domestic law of those Contracting States, present his/her case to the CA of the Contracting State of which he/she is a resident. The case must be presented within certain years (mentioned in the DTA) from the first notification of the action resulting in taxation not in accordance with the provisions of the DTA.

3 Who can apply MAP?

- 3.1 MAP is available to:
- Taxpayer who is a resident in Brunei Darussalam; and
 - Taxpayer who is not a resident in Brunei Darussalam but has a subsidiary or branch operating in Brunei Darussalam. Taxpayer however will have to apply for MAP in the jurisdiction in which it is a tax resident and in which Brunei Darussalam has DTA with.

¹ List of DTAs which have been signed by Brunei Darussalam are available at MOFE's website; <https://www.mofe.gov.bn/divisions/avoidance-of-double-taxation-DTA.aspx>

3.2 Examples on who can apply MAP:

- A tax resident company of Brunei Darussalam which has an overseas branch in a DTA jurisdiction can apply to MOFE for a MAP concerning its overseas branch's affairs.
- A foreign company which has a branch operating in Brunei Darussalam can apply for MAP to the CA of the jurisdiction in which it is a tax resident. It's branch will then has to inform MOFE of the MAP application.

4 When to apply for MAP?

4.1 Taxpayer should only initiate MAP when he/she 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 signed by both Contracting States. Scenarios of taxation not in accordance with the DTA include but not limited to:

4.1.1 Status of residency

A taxpayer who is considered a resident in Brunei Darussalam under its domestic law is also a resident of a treaty partner under the DTA between Brunei Darussalam and the treaty partner. If each Contracting State asserts that the taxpayer is a resident of its jurisdiction for the purpose of the DTA between both Contracting States, the taxpayer could be subjected to tax on the same income in both Contracting States. A MAP would initiate discussions between the CAs regarding the proper application of a tiebreaker rules contained under the provision of "Resident" article of the DTA. The taxpayer should submit MAP application to the CA of the country in which the taxpayer asserts residency.

4.1.2 Withholding tax

A withholding tax is levied beyond what is allowed within a provision under the DTA by a treaty partner on a payment to a taxpayer who is a resident of Brunei

Darussalam. The taxpayer may submit MAP application to MOFE to address the taxation not in accordance with the provision of the DTA.

4.1.3 Permanent establishment

A tax resident company of Brunei Darussalam which has an overseas branch in a DTA jurisdiction is subject to additional tax because of an adjustment by that DTA jurisdiction of the income allocated to the branch. The company may submit MAP application to MOFE to prevent double taxation by allowing an increased foreign tax credit or exemption or by seeking the CA of the DTA jurisdiction's agreement to give relief from the adjustment.

4.1.4 Classification of Income

Where there is uncertainty whether the DTA cover an item of income, or where there is uncertainty of the classification of an item of income arising in the other DTA jurisdiction, a taxpayer may submit MAP application to MOFE for clarification.

4.2 Taxpayers may seek resolution on taxation not in accordance with the tax treaty issues that recur over multiple years of assessment, subject to the time limits provided in the relevant DTA. Failure to initiate MAP within the time limit specified in the MAP article of the relevant DTA may result in the rejection of MAP application.

5 What are the benefits of seeking MAP?

5.1 The benefits of seeking MAP include:

- (a) MAP may provide an efficient and effective way to resolve double taxation issues through inter-government negotiation and cooperation between taxpayers and competent authorities; and
- (b) MAP relieves double taxation occurring in the audited financial years when an agreement on the appropriate adjustments is reached between MOFE and the relevant CA of the treaty partner.

6 How to apply for MAP?

6.1 The four steps MAP process when applying for MAP is as follows:

01→ 02→ 03→ 04			
MAP Request	Evaluation	Negotiation	Implementation
Taxpayer submits MAP application.	MOFE evaluates MAP and gives evaluation result within 1 month from the date of receipt of complete application.	MOFE will engage with CA of treaty partner and informs MAP applicant of the MAP outcome within 1 month from reaching agreement between MOFE and CA.	MOFE and MAP applicant implement the agreed MAP outcome.

Step 1: MAP Request

6.2 When there is uncertainty on the issue in consideration or documents to be submitted for MAP, taxpayer may reach out and notify MOFE of its intent to have a meeting before submitting a MAP request.

6.3 The notification can be made in writing via official letter and include a brief description of the facts and circumstances which give rise to non-accordance of the provisions with the relevant DTA. Taxpayer may send the letter to the address below and submit the soft copy to international.revenue@mofe.gov.bn.

Director
 Revenue Division
 Ministry of Finance and Economy
 Ministry of Finance and Economy Building
 Commonwealth Drive
 Bandar Seri Begawan BB3910
 Brunei Darussalam

6.4 MOFE will then meet the taxpayer **within 1 month** of receiving the notification. The purpose of the meeting is for the taxpayer to present the issues leading to taxation not in

accordance with the provisions of the relevant DTA and MOFE to review whether a MAP request is justifiable. If the outcome of the meeting merits consideration for a MAP and MOFE itself not able to come to a satisfactory solution, MOFE shall inform the taxpayer to submit a formal MAP request and the next course of action.

- 6.5 The MAP request should be made in a soft copy and a hardcopy which include all the details and documentation based on the guidance provided under Section 7. Taxpayer shall send the MAP request to the address stated in Section 6.3 above and submit electronically to international.revenue@mofe.gov.bn

Step 2: Evaluation

- 6.6 MOFE will evaluate the MAP request **within 1 month**. Concurrently, MOFE will notify CA of the treaty partner in writing of receiving the MAP request. CA of the treaty partner, if it wishes to acknowledge receipt of the notification, may do so **within 1 week** from the date of the receipt.
- 6.7 Where there are deficiencies, MOFE shall request taxpayer in writing to take remedial action. MOFE may also query taxpayer for additional information and documents when necessary. The time given to furnish the additional information will depend on the volume of documents required, with a maximum time period of **2 months**.
- 6.8 When MOFE accepts the MAP request, e.g., after reviewing the supporting documents, MOFE not able to unilaterally arrive at a satisfactory solution, MOFE will issue acceptance letter to the taxpayer **within 1 month** of the receipt of taxpayer's **complete** MAP application. MOFE will also update the CA of the treaty partner on the commencement of the MAP case.
- 6.9 If MOFE considers the MAP request appears to be not justified, it will firstly notify CA of the treaty partner of the facts and circumstances which led to the rejection proposal. MOFE will then ask the CA of the treaty partner for its view on the case and if both agree, MOFE will inform the taxpayer together with the reasons for the rejection.

- 6.10 However, if the CA's view differs, MOFE will revisit the evaluation and if necessary, initiate bilateral consultation with the CA of the treaty partner to discuss and determine whether the MAP request is justified.

Step 3: Negotiation

- 6.11 If MOFE is not itself able to arrive at a satisfactory unilateral solution, then the MAP case will move on to the bilateral/multilateral negotiation to resolve the case by mutual agreement with the CA(s) of the treaty partner.
- 6.12 MOFE will engage the CA of the treaty partner to discuss the MAP case. Negotiation can be conducted electronically, tele-communication or face-to-face meeting. MAP negotiation between MOFE and CA of the treaty partner is a government-to-government process in which there is generally no direct taxpayer involvement.
- 6.13 During negotiation, MOFE may seek clarification or further information from the taxpayer, hold discussions with the taxpayer or conduct site visits to the taxpayer's premises which include interviewing the taxpayer's key personnel. Taxpayers may also be invited to make a presentation before MOFE and CA of the treaty partner, where appropriate, to ensure a common understanding of the facts of the MAP case.

Note: Taxpayer is expected to cooperate fully with MOFE by providing information and documents within the time limit. Taxpayer is responsible for supplying MOFE with complete and accurate information required to resolve the MAP case. The onus is on the taxpayer to keep MOFE 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 MAP request is accepted and which is relevant to the issues under consideration.

- 6.14 Upon request from the taxpayer, or when necessary, the taxpayer will be updated on the progress of the competent authorities' negotiations to an extent that the update does not interfere with the MAP process.

6.15 While MOFE 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, MOFE aims to resolve a MAP case **within 24 months** from receiving the taxpayer's complete request. MOFE will also apply its best efforts to bring every case to closure in a prompt, efficient and effective manner.

Step 4: Implementation

6.16 When a MAP outcome is reached after negotiation, MOFE will inform the taxpayer in writing **within 1 month** of reaching agreement to explain the details and implementation of the proposed agreement.

6.17 The taxpayer will have to decide and inform MOFE whether the MAP outcome is acceptable. Taxpayer is not obliged to accept and may reject the outcome, however, taxpayer is not allowed to agree partially to some issues or taxation years involved as the MAP request is originally intended in respect of all issues and taxation years involved.

6.18 If the taxpayer accepts the MAP outcome, MOFE and CA of the treaty partner will proceed to exchange the proposed agreement to conclude the MAP. MOFE will notify the taxpayer in writing of the date and contents of the Agreement. If the MAP outcome is rejected, MOFE will advise the taxpayer accordingly and the case will be closed.

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

6.20 MOFE will take the necessary action to put into effect the results as required by the Agreement, in accordance with the applicable DTA.

6.21 MOFE may, after consulting and with agreement from CA of the treaty partner, terminate the MAP case if it is recognised that continuation of the MAP will not reach any agreement. If this arise, MOFE will inform taxpayer accordingly.

7 Checklist to submit for MAP request

7.1 A MAP request should contain all relevant information which include:

- (a) Taxpayer's name, tax identification number (ROC/RFC registration number), address, contact details and main business activities;
- (b) Letter of authorization stating the engagement of tax agents or other representatives to act for the taxpayer²;
- (c) The name of the treaty partner tax administration involved;
- (d) 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;
- (e) The specific DTA including the provision(s) of the specific article which the taxpayer asserts is not being correctly applied, and the taxpayer's interpretation of the application of the article 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);
- (f) The name, address, tax reference number of other taxpayer involved and their relationship (taxpayers should also keep MOFE informed of any changes in these relationships that occur after the MAP request has been filed);
- (g) Analysis of the issue(s) involved, including the taxation years covered/ to be covered, the amount of income and tax in dispute together with copies of the notices of assessment, as well as documents whether the taxpayer has filed notice of objection or notice of appeal;
- (h) 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;

² Taxpayers, who have appointed tax agents or other representatives to act on their behalf on matters relating to their MAP applications, are required to provide letter of authorization. The sample for letter of authorization is available at MOFE's website; [https://www.mofe.gov.bn/Shared%20Documents/revenue/MAP/MAP - Sample Letter of Authorisation.pdf](https://www.mofe.gov.bn/Shared%20Documents/revenue/MAP/MAP_-_Sample_Letter_of_Authorisation.pdf)

- (i) 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;
- (j) Whether the taxpayer has reflected the issue(s) involved in its Brunei Darussalam income tax return (e.g. income not brought to tax, foreign tax credit claimed);
- (k) A statement confirming that all information and documentation provided in the MAP request is accurate and that the taxpayer will assist MOFE in its resolution of the issue(s) presented in the MAP request by furnishing any information or documentation required by MOFE in a timely manner. This declaration can be made in the cover letter; and
- (l) Any other relevant information.

7.2 The MAP request should be signed by the taxpayer, or by its authorized representative, confirming the accuracy and completeness of the facts and information presented in the request.

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

8 Time limits for requesting access to MAP

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

8.2 If the time limit for presenting a MAP application is not specified in the relevant DTA, CA will follow the time limits specified in Article 25 on MAP of the OECD Model Tax Convention on Income and on Capital which is **within three years** from the first notification of the action which gives rise to taxation not in accordance with the DTA.

- 8.3 In cases which involve adjustment of tax or income as a result of audit assessment, taxpayers are encouraged to notify MOFE of its intention to request for MAP as soon as the Notice of Assessment is issued or at the same time when the taxpayer files an appeal.
- 8.4 Failure to initiate MAP within the time limit specified in the MAP article of the relevant DTA may result in the rejection of MAP application.

9 Acceptance of a MAP request

- 9.1 The acceptance of a MAP request is at the discretion of both MOFE and CA of the treaty partner. MOFE will consider taxpayers' request for a MAP based on the merits of each case. MAP request will only be accepted if:
- The issue or transaction relates to a foreign country with which Brunei Darussalam 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 MOFE 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 Darussalam and/or the CA of the treaty partner have decided, as a matter of policy, not to consider.
- 9.2 Taxpayer should recognize that in the event when the taxpayer has accepted a settlement with CA of the treaty partner before applying for a MAP request to MOFE, any negotiation between MOFE and the CA of the treaty partner (should the MAP request is accepted) will be difficult to divert from the original settlement unless there is a strong basis or evidence to support the taxpayer's argument for it to differ with what was agreed in the original settlement.

10 Termination of MAP

- 10.1 MOFE reserves the right to propose to CA of the treaty partner to cease MAP process, which may be due to the following circumstances:
- a) When the subject for MAP is not within the scope of MAP under the applicable DTA;
 - b) When the application for MAP or the attachments contains incorrect information;
 - c) When the taxpayer fails to provide the documents necessary for MAP within a reasonable time;
 - d) When retrieval of documents necessary for MAP is not possible due to lapse of time;
 - e) When the taxpayer does not accept the MAP outcome/proposed Agreement reached by the CAs;
 - f) When it is recognized that the continuation of MAP will not reach any agreement;
 - g) When MAP request has been withdrawn by the taxpayer with acceptable reasons; and
 - h) Any other reasons not aforementioned.
- 10.2 Taxpayer can withdraw its MAP request any time during the MAP process and before an Agreement has been reached. Any withdrawal of MAP request should be made in writing, stating reasons, to MOFE.
- 10.3 MOFE will inform CA of the treaty partner on the MAP termination. Where CA of the treaty partner has accepted the proposal from MOFE to terminate the MAP or vice versa, MOFE will notify the taxpayer that MAP has been closed.
- 10.4 Where a MAP process has been discontinued under any of the circumstances listed under Section 10.1, if the taxpayer wishes to resume the MAP process, MOFE will consider the request afresh and re-assess the merits of the new request.

11 Interaction between MAP and domestic law

- 11.1 MAP will not deprive taxpayers of other remedies available under their respective domestic tax law. Taxpayers should inform MOFE 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 Darussalam tribunals and courts, MOFE is unlikely to depart from the determination of the Brunei Darussalam tribunals and courts.

12 Confidentiality of taxpayer's information

- 12.1 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. MOFE is committed to ensure confidentiality with regards to taxpayer information under the tax treaty and the respective laws.

13 Further information

- 13.1 For information on Brunei Darussalam's MAP profile and MAP guidance (guidelines, process, flowchart), please visit MOFE's website at:

<https://www.mofe.gov.bn/divisions/avoidance-of-double-taxation-adta.aspx>

- 13.2 For more information and enquiries, you can reach us at:

Address:

International Unit, Revenue Division
Level 1, Island Block
Ministry of Finance and Economy
Commonwealth Drive
Bandar Seri Begawan BB3910
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