

## **MUTUAL AGREEMENT PROCEDURE IN TURKEY**

Metin Duran, Ph.D.

Istanbul/TURKEY

Turkish Revenue Administration (TRA) has recently introduced a Mutual Agreement Procedure Guideline. As noted by the revenue administration in the MAP guidelines, Turkey has signed 71 income tax treaties up to date, and all of these treaties have Mutual Agreement Procedures generally as Article 25. The MAP guidelines aim to explain the procedures in Turkey that apply with respect to the mutual agreement articles contained in Turkey's treaty network.

Even though double tax treaties have detailed and well prepared provisions, sometimes taxpayers may have problems caused different approach of different tax authorities and as a result double taxation problems. In these kinds of situations tax payers may apply to internal process such as applying for settlement or court but they may also apply for competent authority for resolving these issues.

Within this context, we will provide practical insight about Mutual Agreement Procedures of Turkey "MAP" in the following paragraphs.

### **I- General Frame of Article 25 of Double Tax Treaties signed by Turkey:**

Article 25 of OECD Model Tax Convention and double tax treaties which are signed by Turkey, explain the procedures in case there is a disagreement about one of the contracting states implementation or the execution of the tax laws are not according to the agreements.

"Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article 24, to that of the Contracting State of which he is a national. The

case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Convention<sup>1</sup>

As seen above paragraph, OECD Model Tax Convention states 3 years period for application, but this clause can vary on articles depending on the contracting states that Turkey has treaties.

The competent authorities of the Contracting States shall endeavor to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Convention. They may also consult together for the elimination of double taxation in cases not provided for in the Convention. The competent authorities of the Contracting States may communicate with each other directly, including through a joint commission consisting of themselves or their representatives, for the purpose of reaching an agreement in the sense of the preceding paragraphs.<sup>2</sup>

## **II- Eligibility to Application for CA:**

According to MAP Guidelines introduced by TRA, in order to apply for a MAP, taxpayers must be a resident of one of the contracting states. But taxpayers can also apply to the country which they are citizen if they applying to CA according to article 24 titled “Non-Discrimination”

If tax payer changed his residency from one contracting state to the other contracting state, the tax payers should apply the one which he/she residents during the conflict issue occurred.

- Where to apply for MAP and who is the Competent Authority:

Double tax treaties and model tax convention determined to the CA, according to these in general the competent authority is the Minister of Finance, or the person to whom selected by the Finance Minister. In Turkey currently “The European and International Relations Department” of Revenue Administration is determined as competent authority.

## **III- The issues to apply for MAP:**

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<sup>1</sup> OECD Model Tax Convention Article 25.

<sup>2</sup> OECD, MTC, Article 25

The MAP guideline provides some examples for applying MAP, however the guideline also states that these are only examples and the reasons for applying MAP is not limited for these subjects. Therefore tax payers can apply MAP for the other issues similar to these and related to the double tax treaties.

According to the guideline, in general MAP application can be summarized in three categories, those are:

- If residents of one of the contracting states of the treaties, believe that one or both of the contracting states treatments to them are not in line with the articles of treaties,
- Problems caused by implementations or observations of the treaties by the contracting states,
- Double taxations problems causes by the issues which are not covered by the treaties.

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MAP finds solutions for taxpayers as well as for tax authorities that are seeking for way out from the international taxation matters. Residents in one of the contracting states argue that taxation procedures in one of or both contracting states are not fair. Beyond that misinterpretation of tax treaties and misapplications there may also be other aspect of the matters where unclear topics in current tax treaties are still awaiting to be solved out. Besides, frequently encountered practical cases are mostly gathered around the following issues;<sup>3</sup>

- Issues related with article 7 of OECD model Tax convention (Business profits),
  - Transfer Pricing Issues, Mostly Transfer Pricing Adjustments due to different interpretations
    - Disguised Profits via Transfer Pricing
    - Arms Length Requirement for the transactions between related parties under the article 9 of the treaties
  - PE issues,
  - Residency in which of the contracting states,
  - Royalty, interest and dividend taxation matters
  - Problems due to the characteristics of the provided services

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<sup>3</sup> MAP Guideline, page6,7

### **Who can apply to MAP?**

Apart from the contracting states competent authorities, the resident taxpayers of either contracting states who suffers from unfair taxation are allowed to apply for MAP.

Moreover, we should also underline that citizens regardless the residency of the person are also welcomed to apply for mutual agreement -granted right under “non-discrimination” principle within the tax treaties- against discriminating taxation of contracting state due to citizenship.

### **IV- Duration for MAP Application:**

Application duration table of each contracting state for MAP has been given as an “Attachment 1” to the MAP Guideline. Time-limitation should be generally considered according to the local legislations unless otherwise stated in the tax treaties. And the application duration is assumed to start with the declaration to the taxpayer and ends up with the specified dates at the tax treaties.

According to MAP Guideline, tax payers can not apply for MAP if they choose to take the case to the court. If tax payer already applied to the court, in order to apply to MAP they have to withdraw their application from the court.

According to Turkish Administrative Procedure Act, tax payers can apply to the tax court within 30 days and to the State Council (Supreme Court) within 60 days. There is not any determination on Turkish laws and regulations about applying to the MAP process to cease these time determination. In order to cease statute of limitation there should be clear determination on double tax treaties.

The MAP guideline states that if tax payers are not satisfied with the treatment of Turkish tax administration to them they may apply to court or other domestic procedures or they may apply to MAP. But if tax payers would apply to the court, and the court reach a verdict, neither tax payers nor the tax administration can apply any authority about the verdict including competent authority.

As stated above, if tax payers would like to apply for MAP but also applied to the court, he/she has to withdraw his/her application from the court in order to proceed to the MAP process. In addition to this, taxpayers’ application for a MAP should be approved by the CA and after that the process can be started.

.In case of any rejection by competent authority, reasons for rejection will be addressed to the applicant. On the other hand, general approach is to come to a head peculiar to the case in not more than 2 years time after the application. Therefore, period of limitation has a priority in MAP guideline wherein the limitation periods are attached as “Attachment 2”. Regardless the outcome of the MAP, the applicants might apply court as well for the respective allegedly unfair tax treatment within the period of limitation under local legislation.

In order to achieve solid results and accelerate the mutual agreement procedures between the competent authorities, “Information Form” referred as “Attachment 3” should also be attached to the application letter by applicant. Further documentation might also be required if necessary.