

MUTUAL AGREEMENT PROCEDURES (MAPs)

Minimum Information Requirements

Background

An Article dealing with the Mutual Agreement Procedure (MAP) is contained in most of South Africa's Double Taxation Agreements (DTAs). The Article provides for a MAP for resolving difficulties arising out of the application of the DTA.

In terms of paragraphs 1 and 2 of the MAP Article, the Competent Authority for a Contracting State shall endeavour by mutual agreement to resolve the situation of taxpayers subjected to taxation not in accordance with the provisions of the DTA.

Competent Authority in South Africa

In South Africa the Competent Authority is the Commissioner of the South African Revenue Service. The Commissioner delegates the duty of Competent Authority for MAP purposes to designated representatives in the Legislative Research & Development Subdivision within Legal and Policy.

MAP Request for Assistance

The MAP article in a particular DTA allows the Competent Authorities from the governments of the Contracting States/Parties to interact directly with the intent to resolve international tax disputes. These are done in terms of a MAP Request for Assistance.

A MAP Request is submitted to the Competent Authority of the taxpayer's State of residence in cases where the taxpayer considers that the actions of one or both countries' tax administrations resulted or will result in taxation not in accordance with that DTA.

The request must be presented by the taxpayer within the period specified in the relevant DTA. It is important to note that this period may differ depending on the DTA.

In cases where the Competent Authority of the State of residence of the taxpayer agrees with the taxpayer, but is not able to resolve the matter itself, the first-mentioned Competent Authority will raise the matter with the Competent Authority of that other Contracting State.

Requests need to comply with specific minimum information requirements in order for the Competent Authority of the State of residence to be able to process the particular request. The minimum information requirements for a MAP Request depend on what type of MAP Request is involved.

Types of MAP Requests

The content of a MAP Request can include details on any of the following:

1. Transfer pricing adjustment requests
2. Attribution of profits of a permanent establishment
3. Dual residence of individuals and persons other than individuals
4. Withholding tax levied beyond what is permitted by the applicable DTA
5. Any other case in which a person considers that the taxation is not in accordance with the applicable DTA

A Transfer Pricing Adjustment Request (ref. para. 1 and 2) is, for purposes of the administration, treated separately from the rest. **Transfer Pricing MAP Requests** should be sent to a specific designated mailbox at SARS, namely–

- TransferPricingMAP@sars.gov.za

Those included in paragraphs numbered 3 to 5 above, are treated as **Interpretation MAP Requests**. They need to be sent to a different designated mailbox at SARS:

- SARSMAP@sars.gov.za

Minimum Information Required

The relevant facts and minimum information required for each MAP Request are listed in **Annexure A**.

Information furnished must be substantial and specific and the complete MAP Request must be sent to the specific dedicated email address for that type of MAP Request. Taxpayers wishing to provide information in encrypted format, such as password protected Microsoft Office or PDF files, should send a request to do so to the relevant email address, providing comprehensive contact details and the proposed format.

Separate MAP Requests must be submitted for each taxpayer and/or under each DTA in cases where multiple requests are concerned.

If applicable, translated copies of supporting documents can be supplied with those in the foreign language to assist the South African Competent Authority in its processing of the MAP Request.

Note

Annexure A can be used for a checklist by the Competent Authority before requests are sent through.

Annexure A

Minimum Requirements for a MAP Request for Assistance

Section A – General

This information must be included in all MAP Requests.

Section B lists the additional minimum information requirements for Transfer Pricing MAP Requests.

Use the tick/check box on the right to ensure all minimum information requirements are met.

1.	If a representative is acting for the taxpayer, a signed statement from the taxpayer that the representative is authorised to act for the taxpayer in making the MAP Request	<input type="checkbox"/>
2.(a)	<p>Taxpayer details:</p> <ul style="list-style-type: none"> • Full names & surname • Physical address • Contact details • Income tax reference number of the South African resident person 	<input type="checkbox"/>
(b)	<p>In the case of withholding tax, also add:</p> <ul style="list-style-type: none"> • Full names & surname of the person who withheld the tax • Physical address • Contact details • If known, the taxpayer reference number of the person who withheld the tax or was instructed to withhold the tax in the other jurisdiction 	<input type="checkbox"/>
3.	The contact details of the foreign tax administration and/or branch office involved	<input type="checkbox"/>
4.	Tax assessment years/periods involved	<input type="checkbox"/>
5.	Summary of the facts	<input type="checkbox"/>
6.	Analysis of the issues for which Competent Authority assistance is requested	<input type="checkbox"/>

– Section A continues –		
7.	Applicable Article(s) of the relevant DTA and the taxpayer's conclusion based on the facts	<input type="checkbox"/>
8.	<p>A statement indicating whether the taxpayer has –</p> <ul style="list-style-type: none"> • raised the matter with the other State, if applicable; • filed a notice of objection or submitted a refund claim; or • submitted any comparable document, <p>in any of the relevant jurisdictions</p>	<input type="checkbox"/>
9.	An identification of the domestic and DTA time limits in the relevant jurisdictions in respect of the years for which relief is sought	<input type="checkbox"/>
10.	Any copies of correspondence from the other tax administration, copies of briefs, objections, etc., submitted in response to the action or proposed action of the other tax administration	<input type="checkbox"/>
11.	Any other facts that the taxpayer may consider relevant	<input type="checkbox"/>
12.	<p>Supporting documentation should include–</p> <ul style="list-style-type: none"> • a schedule of the related amounts • all receipts of tax withheld • all correspondence or dates, and name(s) of person(s) with whom telephonic communication/meetings with the revenue authority took place 	<input type="checkbox"/>

Section B – Transfer Pricing MAP Requests

This information is additional to the required minimum information requirements listed in Section A.

Use the tick/check box on the right to ensure all minimum information requirements are met.

1.	Details regarding the adjustment (or proposed adjustment) in addition to the facts provided in Section A:	
(a)	Calculations setting out the adjustment or proposed adjustment translated in both currencies	<input type="checkbox"/>
(b)	An indication of any specific issues raised by the foreign Competent Authority, other than those listed in paragraphs 10 to 12 of Section A	<input type="checkbox"/>
2.	In addition to those listed in paragraph 8 of Section A, statements indicating the following:	
(a)	Whether the taxpayer has – <ul style="list-style-type: none"> • filed a refund claim; or • entered into a settlement agreement, in either of the jurisdictions related to the relief sought	<input type="checkbox"/>
(b)	Whether the taxpayer or a predecessor has made a prior request to the Competent Authority of either Contracting State on the same or a similar matter	<input type="checkbox"/>
(c)	Whether the MAP Request involves issues that are currently or were previously considered by the tax authorities of either Contracting State as part of – <ul style="list-style-type: none"> • an advance pricing arrangement; • a ruling; or • similar mechanism 	<input type="checkbox"/>

– Section B continues –

3.	A copy of any other relevant Competent Authority Request and the associated documents filed, or to be filed with the Competent Authority of the other Contracting State	<input type="checkbox"/>
4.	<p>In addition to those listed in paragraph 11 of Section A, supporting documents should include the following:</p> <ul style="list-style-type: none"> • Copies of the relevant related party agreements • Copies of the South African and foreign related parties' transfer pricing policies or documentation, whether at a group level or at a company level • Copies of the financial statements of both related parties • Copies of the tax return disclosure of the South African taxpayer involved 	<input type="checkbox"/>

Issued: On behalf of the Commissioner for the South African Revenue Service