

MUTUAL AGREEMENT PROCEDURE (MAP)

What is a MAP?

MAP is a procedure which allows the Competent Authorities or designated representatives of the Competent Authorities from the governments of the Contracting States/Parties to interact with the intent to resolve international tax disputes.

MAP is provided for in an Article in a Double Taxation Agreement (DTA) and can involve matters containing juridical double taxation cases, as well as inconsistencies in the interpretation or application of a DTA.

What is a Competent Authority?

DTAs are usually concluded between the governments of two countries. These countries are then referred to as the Contracting States or Contracting Parties to such an agreement.

"Competent Authority" is a term used in tax conventions or agreements to identify a position, a person or a body to whom issues can be addressed within a Contracting State.

The Competent Authority in South Africa is the Commissioner for SARS and duties have been delegated to designated representatives in the Legislative Research & Development Subdivision within Legal & Policy.

What is the function of a Competent Authority?

The Competent Authority in a Contracting State/Party is charged with the responsibility to interact with its counterparts in any matters arising between the different Contracting States/Parties pertaining to the interpretation or the application of a DTA, and to resolve any international tax disputes that might arise.

A Competent Authority is generally committed to ensure a good faith application of a DTA. The Competent Authority endeavours to resolve requests from their counterparts in accordance with a particular DTA.

How does it work?

The DTA permits a mutual agreement procedure (MAP) for resolving difficulties arising from the application of a DTA in the broadest sense of the term.

It basically authorises the Competent Authorities or their designated representatives to communicate with each other directly, including through joint commissions, for the purpose of resolving the matters that might be brought before them.

A MAP Request for Assistance may deal with any of the following subjects:

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

Depending on the relevant subject, the MAP request will be routed into one of two channels, i.e.-

- Transfer Pricing MAP
- or
- Interpretation MAP

MAP Request for Assistance

It is a request from one Competent Authority of a particular DTA's Contracting State/Party, to the Competent Authority of the other Contracting State/Party, under a particular DTA, to resolve any international tax dispute.

Step 1

In cases where the taxation which is not in accordance with the DTA has been imposed, the taxpayer must first raise the issue with the relevant State as agreement by the other State will negate the need for a MAP.

Step 2

If unsuccessful, the taxpayer may then approach the Competent Authority of his/her country of residence to request a MAP under the relevant DTA.

If the Competent Authority in the country of residence cannot itself resolve the matter, but is in agreement with the taxpayer's request for a MAP, the Competent Authority will take up the matter with the Competent Authority of the other Contracting State/Party under the specific DTA.

Country Profiles on Mutual Agreement Procedures (MAP) which contain information about the Competent Authorities' contact details, domestic guidelines for MAP and other useful information for both tax authorities and taxpayers are available on the OECD website at <http://www.oecd.org/ctp/dispute/country-map-profiles.htm>.

South Africa's MAP profile can be accessed at <https://www.oecd.org/tax/dispute/South-Africa-Dispute-Resolution-Profile.pdf>.

What to submit & Where to submit it

SARS, as the Competent Authority, requires certain minimum information to be included in a MAP Request, whether it is for a Transfer Pricing MAP Request or an Interpretation MAP Request.

The types of MAP Requests, the minimum information required per type, and the relevant email address to be used per type, are set out in the table below.

Types of MAP Requests	Minimum Information Requirements	Email Address
Transfer Pricing MAP Requests, including- <ul style="list-style-type: none">• Attribution of profits of a permanent establishment	<ul style="list-style-type: none">• Minimum Information Requirements for MAP Requests	<ul style="list-style-type: none">• TransferPricingMAP@sars.gov.za
Interpretation MAP Requests, including - <ul style="list-style-type: none">• Dual residence of individuals and persons other than individuals• Withholding tax levied beyond what is permitted		

by the applicable DTA

- Any other case in which a person considers that the taxation is not in accordance with the applicable DTA

- SARSMAP@sars.gov.za

Important Notes

MAP Requests should **only** be submitted to SARS **after** the South African resident taxpayer has, where applicable, first approached the foreign revenue authority to make that revenue authority aware that, in that taxpayer's view, tax which is not in accordance with the provisions of the relevant DTA, has been levied by the foreign revenue authority

If the matter cannot be resolved through that approach, **then** the South African resident taxpayer can approach the Competent Authority at SARS for assistance

MAP Requests should contain **all the minimum requirements** stipulated for each type, and should be submitted **to the correct email address** to ensure that they reach the correct section


SOUTH AFRICAN PROCEDURES

How can I request a Request for Correction (RFC)?

The RFC will be available through:

- [eFiling](#) – this channel can be used by eFilers to request, complete and submit the correction.
 - Logon to eFiling
 - Select
 - Returns
 - Returns History
 - The applicable type of tax (e.g. Income Tax, VAT, etc.)
 - The applicable return/declaration.
 - Click Open on the far right.

Once you are on the workpage, select Request Correction:

A rectangular button with a light grey background and a thin border, containing the text "Request Correction" in a dark grey font.

Important information for taxpayers when completing a RFC

- You will only be allowed to adjust the last version of each declaration, therefore ensure the correct version is always adjusted.
- You won't be allowed to increase the input tax when doing a revision on a past tax period. If you wish to deduct input tax available to a past tax period, a deduction can be made in the next tax period or any future tax period. This can only be done if the deduction is made within five years from the date of the first claim for the input tax.

When won't the RFC be available?

A RFC won't be allowed in the following circumstances:

- You will need to wait for the outcome where:
 - There is an on-going audit
 - The one RFC which is allowed was sent or
 - The relevant material (supporting documents) has already been sent.
- Where an audit case was completed or a revised declaration was done by a SARS user.
- For Income Tax (Personal, Corporate or Trusts) three years after the assessment or where the decision wasn't allowed.
- For any VAT tax period more than five years after the assessment and for Diesel any tax period more than two years.

You'll need to [lodge an objection](#).

15 May 2017 - Introduction of improvements to the Dispute management process

On **15 May 2017** SARS introduced important changes and improvements to its current dispute management process.

Please take note of the following:

- **Request for Reasons:** SARS has, for the very first time, implemented an electronic Request for Reasons via eFiling and the SARS branches. The Request for Reasons automated functionality has been implemented for Personal Income Tax (PIT), Company Income Tax (CIT) and Value-Added Tax (VAT).

The Request for Reasons functionality allows taxpayers to request reasons for the assessment where the grounds provided in the assessment do not sufficiently enable a taxpayer to understand the basis of the assessment and to formulate an objection, if the taxpayer is aggrieved by the assessment. Once the system has identified that a valid Request for Reasons has been submitted, the period within which an objection must be lodged will be automatically extended for the period permitted by the Dispute Resolution Rules. The Request for Reasons case management workflow further allows SARS to improve its tracking and management of request for reason requests.

- **Request to allow late submission of a dispute for PIT, CIT and VAT:** The new dispute management process introduces a separate condonation workflow whereby the taxpayer is now allowed to submit the Request for Reasons, Notice of Objection (NOO) or Notice of Appeal (NOA) after the periods prescribed by the Dispute Resolution Rules have lapsed. Prior to the introduction of the separate workflow, the condonation process was included in the actual dispute process. Where the request for late submission of a Request for Reasons, NOO or NOA was not successful, the current dispute process caused confusion regarding the outcome of the dispute and what the next available step in the dispute process was.

The new automated condonation process allows for SARS to attend to the request for late submission before the Dispute or Request for Reasons case can be created and considered by SARS. If the Request for Reasons, NOO or NOA was submitted late, the taxpayer will be prompted to provide reasons for the late submission. The new condonation process will ensure that the request for late submission is aligned with legislation as SARS will now inform the taxpayer upfront that the submission is late instead of classifying the dispute as invalid.

- **Suspension of payments on VAT:** Taxpayers are now able to request suspension of payments pending the outcome of a dispute on VAT via eFiling or at a SARS branch. This is in line with already implemented suspension of payments that was implemented for PIT and CIT in 2015.
- **eFiling Guided Process (PIT, CIT and VAT):** To assist taxpayers in following the correct dispute sequence and complete all the information required, eFiling has been made an entirely guided process. The eFiling guided process will ensure that the dispute is submitted according to legislative requirements and thereby eliminating any invalid disputes from being submitted to SARS.