

Mutual Agreement Procedure Guidelines



**Financial Services Bureau
Macao SAR, China**

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1. Introduction

- Macao SAR has been concluding Double Tax Agreements for the Avoidance of Double Taxation (“DTAs”) with respect to Taxes on Income.
- Those DTAs provide for a procedure to resolve disputes named Mutual Agreement Procedure.
- The purpose of these Guidelines is to provide practical information regarding the MAP whose request for initiation may be submitted before the Financial Services Bureau (“DSF”).

2. Scope of the Mutual Agreement Procedure

The request for initiating a Mutual Agreement Procedure (“MAP”) may be **submitted before the DSF** under a DTA* irrespective of the remedies provided by the internal law of Macao SAR or of the other Party concerned.

*The texts of the DTAs concluded by Macao SAR are available at:

http://www.dsf.gov.mo/tax/tax_avoiddoubletax.aspx

2. Scope of the Mutual Agreement Procedure

The MAP can be requested where a person covered by a DTA considers that the actions of Macao SAR and/or the other Contracting Party result or will result for him in taxation not in accordance with the provisions of such DTA, namely in cases where:

- The taxpayer is deemed to be a resident of both Parties or where there is no agreement on the jurisdiction of which he is a resident;
- The taxpayer and the tax authorities do not agree on the existence of a permanent establishment or on the characterization of certain items of income for the purposes of the application of the DTA;
- The taxpayer and the tax authorities do not agree on the interpretation and application of provisions or principles of the DTA;
- Transfer pricing adjustments between associated enterprises of different Contracting Parties, have occurred or will occur;
- Adjustments of profits attributable to a permanent establishment situated in a Contracting Party of an enterprises of the other Contracting Party have occurred or will occur;

2. Scope of the Mutual Agreement Procedure

- The taxpayer and the tax authorities that have made an adjustments do not agree as to whether the conditions of the application of an anti-abuse provision of a DTA have been met;
 - The taxpayer and the tax authorities that have made an adjustment do not agree as to whether the application of anti-abuse provision of an internal law is in conflict with the provisions of a DTA.
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- The Mutual Agreement Procedure may also apply for multilateral disputes with the same rules being applicable as to the bilateral disputes as provided in these Guidelines.
 - Taxpayers may request for the multi-year resolution of recurring issues through MAP.

3. Who can request to initiate a MAP

- Any **person that is a resident of Macao SAR** as defined in accordance with the DTA which applies to the case and that considers that the actions of Macao and/or the other Contracting Party lead or may lead for him in taxation not in accordance with the provisions of such DTA, may irrespective of the remedies provided by the Macao legislation or the internal law of the other Contracting Party, **present his case to the DSF.**
- In cases where an adjustment that affects associated enterprises resident in different jurisdictions, it is advisable that each of those enterprises submits a request to initiate a MAP to the competent authority of the Contracting Party in which it is a resident.
- In certain DTAs, it is allowed that persons resident of the other Contracting Party or other eligible persons under the treaty may present their case to the competent authorities of either Contracting Parties, i.e., presenting the case to the DSF or the competent authority of the other Contracting Party.

3. Who can request to initiate a MAP

Where this is provided for by a DTA concluded by Macao SAR, **any person who has the right of abode or is incorporated or otherwise constituted in Macao**, and that considers that the actions of the other Contracting Party lead or may lead for him in taxation not in accordance with the provisions of such DTA, may also present his case to the DSF, irrespective of the remedies provided by the Macao legislation or the internal law of the other Contracting Party, **if his case comes under the first paragraphs of the Article on “non discrimination” of such DTA.**

4. How to initiate a MAP

Format of the Request

Requests to initiate a MAP should be submitted, **in writing and in paper** format, to the DSF and sent to the following address:

**Direcção dos Serviços de Finanças
Av. da Praia Grande, n. 575, 579 e 585
Macau**

4. How to initiate a MAP

Time limit to submit a MAP request

The request to initiate a MAP must be submitted **within the time frame provided under the applicable DTA**, counted from the date of the legal notification of the tax assessment made by the tax authorities, or an equivalent measure, which results or may result in taxation not in accordance with the provisions of such DTA.

4. How to initiate a MAP

Requirements for a MAP request

- The request to initiate a MAP is not subject to essential formalities (i.e. no form or draft has been defined) besides those mentioned in this document.
- Where the request is a protective MAP request*, the person that submits the request should expressly declare that the case only needs to be examined following a further notification to do so.
- The request must be dated and signed by the person that submits it, or by a duly authorized representative (in which case, a proxy or similar authorization shall be attached).
- The language of the procedure is Chinese, Portuguese or English.

*A protective MAP request refers to a MAP request submitted by a person to ensure that it is made within the time frame provided under the legal instrument that applies to the case, but the person indicates that the request only needs to be examined following a further notification to do so. This may be the case, for instance, that the person intends to wait for an administrative or judicial decision before wanting the MAP request to be examined.

4. How to initiate a MAP

Requirements for a MAP request

The request must include the following information:

- a. Identification and contact details of the person that submits the request and of the other parties to the relevant dealings, including the name or corporate name, the address and, where applicable, the taxpayer identification number (or the date of birth, in the case of an individual without taxpayer identification number)
- b. Identification of the other Contracting Party concerned;
- c. Detailed information about the facts and circumstances of the case (including amounts, the relationships between the person submitting the request and the other parties to the relevant dealings as well as the situations and the structure of such dealings);
- d. Identification of the taxation periods covered;

4. How to initiate a MAP

Requirements for a MAP request

- e. Identification of the legal instruments and the specific provisions which the person that submits the request considers are not being correctly applied by either one or both Contracting Parties and identification of Parties (indicating, where applicable and if possible, the tax administration office that has made or is proposing to make the adjustment, as well as the contact details of that office or of the head of that office);
- f. The analysis by the person that submits the request of the issues raised including its interpretation of the correct application of the relevant provisions. The person that submits the request must support its analysis with the relevant documentation;
- g. Information on whether a request for a MAP was also submitted to the competent authority of the other Contracting Party on the same or a similar issue, under the same legal instrument or under any other legal mechanism to resolve DTA-related disputes and, if so, indication of the dates of submission, competent authority and the office or person in charge to which the request was submitted;

4. How to initiate a MAP

Requirements for a MAP request

- h. Information on whether the request submitted includes any question that may be considered as covered by an advance ruling, settlement agreement, Advance Pricing Agreement or any similar proceeding (either issued or that has been or is being analyzed);
- i. Detailed information regarding any administrative or judicial proceeding initiated by the person that submits the request or by other party to the relevant dealings as well as any court or administrative decision concerning any issues covered by the MAP request;
- j. A statement of the person that submits the request confirming the accuracy and completeness of the information and documentation supplied, as well as committing to send to the DSF as swiftly as possible any changes to the information submitted, any new information, or any documentation concerning the case issued by, or submitted to, the competent authorities of the other Parties;

4. How to initiate a MAP

Requirements for a MAP request

- k. A statement of the person that submits the request committing to answer as completely and swiftly as possible all reasonable and appropriate requests made by the DSF and to have all relevant documentation at the disposal of the DSF.

4. How to initiate a MAP

- Where applicable, copies of the following must be attached to the request:
 - i. The relevant documents issued by the competent authority of the other Contracting Party, such as tax assessments, tax audit reports, or equivalent documents, concerning the actions that resulted or may result in taxation not in accordance with the relevant provisions;
 - ii. The MAP requests submitted to the competent authority of the other Contracting party, on the same or any similar issue, under the same legal instrument or under any other legal mechanism to solve DTA-related disputes, including copy of all documentation attached thereto;
 - iii. Any advance ruling, settlement agreement Advance Pricing Arrangement or any similar proceeding, concerning any issue covered by the MAP request;
 - iv. Any court or administrative decision concerning any issue covered by the MAP request.
- Where the documents attached to the request are very large, a summary thereof should be submitted, whenever possible.

4. How to initiate a MAP

Confidentiality

- The information exchanged between the DSF and the competent authorities of the other Contracting Parties is protected by the rules on confidentiality and data protection provided by the legal instruments.
- All information obtained and generated within the scope of a MAP is also covered by the rules on confidentiality and data protection provided by the Macao legislation.

Fees

No fees are charged for the submission of a MAP request.

Suspension effect

The taxpayer who has presented a MAP request will have the tax payable suspended under Art 44 para. 3 of Complementary Tax Regulations if an appeal has been lodged under Article 44 para. 2.

5. Processing a MAP

- The DSF interprets and applies the provisions of the DTAs in good faith, in accordance with the terms and in the light of the object and purposes of such treaties.
- As regards issues concerning the interpretation and application of DTAs with provisions with identical wording to the ones of the OECD Model Tax Convention, the DSF takes into consideration the latest OECD commentary.
- As regards issues concerning the application of the arm's length principle, the DSF takes into consideration the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations.

5. Processing a MAP

- The DSF acknowledges the receipt of the request within fifteen (15) days and informs the person that submits it that the request will be subject to a preliminary analysis.
- The DSF carries out the preliminary analysis within a period of thirty (30) days from the receipt of the request, verifying its timeliness, the legitimacy of the person that submits the request, whether the request complies with the applicable format and requirements, whether the case can be addressed within a MAP, whether the DTA under which the request for a MAP is submitted actually applies to the case, whether the information and documentations are accurate and complete, whether the objections of the person that submits the request appear to be justified and whether the DSF is able to unilaterally resolve the case.

5. Processing a MAP

- The result of the preliminary analysis is notified to the person that submits the request, who shall be informed of either of the following:
 - i. The acceptance of the request, and of the unilateral resolution of the case; or
 - ii. The acceptance of the request and that the information and documentation submitted are sufficient to initiate a MAP ; or
 - iii. The acceptance of the request, subject to providing some information or documentation missing, in which case the person that submits the request is notified to do so within thirty (30) days (in this situation, the request shall remain pending until the requested items are submitted); or
 - iv. The non acceptance of the request and the justification thereof.
- Within thirty (30) days from the date of receipt of a MAP request (even if the request is not accepted or remains pending), the DSF will inform the competent authority of the Contracting Party to which the case may concern, providing a copy of the request and of all the documents attached thereto.

5. Processing a MAP

- Where the DSF accepts the request for a MAP and considers that the objections of the person that submits such request appear to be justified, but it is not itself able to arrive at a satisfactory solution to resolve the case, it shall endeavour to reach an agreement, negotiated with the competent authority of the other Contracting Party to which the case concerns, that avoids taxation not in accordance with the applicable DTA.
- The person that submits the request must:
 - Respond as completely and swiftly as possible to all reasonable and appropriate requests made by the DSF and have all relevant documentation at the disposal of the DSF;
 - Send to the DSF as swiftly as possible any changes to the information submitted, any new information, or any new documentation issued by, or submitted to, the competent authorities of the other Parties, concerning the case.

5. Processing a MAP

- The person that submits a request may withdraw it by sending a written communication for that purpose to the DSF.
- The DSF informs regularly the person that submits the request about the progress achieved within the scope of the MAP.
- In cases of double taxation, the Agreement between the competent authorities shall set the amount and form of the relief that shall be granted in each Party.

6. Implementation of Agreement reached under a MAP

- Before reaching a final solution of the case with the competent authorities of the other Party, the DSF notifies the terms and conditions of the Agreement to the person that submitted the MAP request, so that this person declares within thirty (30) days whether he accepts them as a final resolution of the case. The acceptance of the Agreement reached under a MAP by the person that submitted the request obliges him to withdraw any pending cases in the judicial or administrative instances.
- If the person that submitted the request does not accept the terms and conditions of such Agreement within the time limit referred to in the preceding paragraph, the DSF shall send the competent authority of the other Party a proposal to close the MAP case without agreement.
- After the acceptance of the Agreement reached under a MAP by the person that submitted the request, the DSF confirms the Agreement, in writing, with the competent authority of the other Party.

6. Implementation of Agreement reached under a MAP

- Any agreement reached under a MAP shall be implemented notwithstanding any time limits in the internal law of the Contracting Parties, in accordance with the applicable DTA.
- The DSF will promote the swift implementation of the Agreements reached with the competent authorities of the other Contracting Parties under a MAP.
- The DSF informs the person that submitted the MAP request about the implementation of the Agreement reached under the MAP.

7. The MAP and the Macao legislation

Tax Audits

- The MAP is entirely independent from tax audit procedures.
- It is possible to request a MAP where double taxation arises from adjustments made under a tax audit to which the taxpayer has not made any objection or which the taxpayer has voluntarily settled.

7. The MAP and the Macao legislation

Administrative and judicial proceedings under Macao legislation

- The submission of a MAP request is not impaired by the initiation of any administrative or judicial proceedings nor prevents the normal processing of judicial cases or administrative procedures for the application of penalties.
- However if any administrative or judicial proceeding has been initiated, whether in Macao or in other Contracting Party, the person that submits the MAP request must inform the DSF of such proceedings, indicating whether there is already any court or administrative decision concerning the issues covered by the MAP request.
- Where an agreement is reached under a MAP prior to a final judicial or administrative decision, the implementation of such agreement shall be subject to the withdrawal, by the person that submitted the MAP request, of any pending cases in the judicial or administrative instances.

7. The MAP and the Macao legislation

Administrative and judicial proceedings under Macao legislation

- The DSF is bound by judicial decisions. Where a judicial decision concerning any issue covered by a MAP request becomes final prior to the conclusion of the MAP, the DSF shall inform the competent authority of the other Contracting Party about such decision and that it is bound by it.
- The DSF shall also request the competent authority of the other Contracting Party to consider taking the necessary measures, as far as it is possible, in order to avoid the double taxation in accordance with the DTA which applies to the case.

7. The MAP and the Macao legislation

Interest and other penalties

The MAP does not cover interest and other penalties (namely deriving from adjustments that have resulted in double taxation).

For additional information

Consult the Financial Services Bureau website

www.dsf.gov.mo

Contact the Financial Services Bureau

Call + 853 2833 6886 during office hour