

TECHNICAL

Direct Taxation

MUTUAL AGREEMENT PROCEDURE GUIDELINES

Further to our [e-CTIM TECH-DT 15-2015](#) dated 5 February 2015, the following is a summary of the contents of the Guidelines.

Subject matter	Summary
<i>Who may apply?</i> (Para. 4)	A Malaysian resident (as defined in the applicable tax treaty) or national who considers that the actions of either or both Malaysia's and its Tax Treaty Partner's tax administrations result/ will result in taxation not in accordance with the provisions of the Tax Treaty may request Malaysia's Competent Authority (CA) assistance under the Mutual Agreement Procedure (MAP) Article of an applicable Tax Treaty.
<i>Scenarios where CA assistance is required</i> (Para. 5)	<p>Examples of actions leading to "<i>taxation not in accordance with a Tax Treaty</i>" that may warrant a request for CA assistance:</p> <ol style="list-style-type: none"> <u>Transfer pricing (TP) adjustment</u> TP adjustment to the price of goods or services transferred to or from a related party in a Treaty Partner country by a taxpayer resident in Malaysia resulting in additional tax on the taxpayer. <u>Residential Status issue</u> A Malaysian resident taxpayer is also treated as a resident of a Tax Treaty partner under that country's domestic law, thus subjecting income of that taxpayer to tax in both countries. <u>Withholding tax issue</u> Withholding tax is levied beyond what is allowed in an applicable Tax Treaty by a Treaty Partner on a payment to a Malaysian resident. <u>Permanent Establishment (PE) issues</u> <ol style="list-style-type: none"> Income allocated to a PE of a Malaysian resident taxpayer (e.g. a branch) in a Tax Treaty Partner country is subjected to additional tax in that country. Income of a Malaysian resident taxpayer from carrying on business in a Treaty Partner country is taxed in that country although the taxpayer has no PE in that country. <u>Characterisation or Classification of Income</u> Uncertainties as to whether a Tax Treaty covers an item of income or in the characterization or classification of an item of income arising in the other jurisdiction.
<i>Time limits</i> (Para. 6)	The time limit for presenting a case for CA assistance is as specified in the applicable Tax Treaty, or if not specified, the Malaysian CA will apply the limit stated in Article 25 (MAP) of the OECD Model Tax Convention on Income and

	Capital.
<i>Procedural matters</i> (Para. 7 and 8)	<p>The following details are provided:</p> <ul style="list-style-type: none"> • Outline of procedures for making a request for a pre-filing meeting prior to a formal request for MAP; • Request for MAP must be submitted to the Tax Division of the Ministry of Finance with a copy to the Department of International Taxation, IRB Malaysia. • Information that must be submitted (e.g. name, address and income tax reference number of taxpayer; name of the Treaty Partner tax administration; etc.) <p>(Please refer Guidelines for full details.)</p>
<i>How the application will be dealt with</i> (Para. 9 to 20)	<p>These paragraphs explain how the application will be dealt with by the Tax Division and Office of MAP. The salient points are as follows:</p> <ul style="list-style-type: none"> • Circumstances under which a request for assistance will be accepted are specified in paragraph 9.3. • The taxpayer will be notified (with reasons) if a proposal for MAP is not to be initiated. • If the MAP is to be initiated, a proposal will be conveyed by the Tax Division to the CA of the Treaty Partner and the taxpayer will be notified of the commencement of MAP negotiations. • There is generally no direct involvement of the taxpayer in the negotiation process (which is a government to government process) but taxpayers are expected to cooperate fully with the Malaysian CA by providing information and documents when requested. Failure to cooperate fully with the Malaysian CA may have direct consequences on whether relief can be provided under the MAP. • If it is recognized that agreement will be reached with the CA of the Treaty Partner, the taxpayer will be informed (in writing) of the contents of the proposed agreement. The taxpayer must then confirm his acceptance in writing, after which the Malaysian CA will reach agreement with the CA of the Tax Treaty Partner. Where an agreement has been reached, the taxpayer will be notified (in writing) of the date and contents of the agreement. • If the taxpayer is not satisfied with the proposed agreement, he may reject it, in which case the CAs will consider the case closed and the taxpayer will be informed accordingly. • The Malaysian CA may propose to the CA of the Treaty Partner for the case to be terminated under circumstances specified in paragraph 19.1. If this is accepted by the CA of the Treaty Partner, the taxpayer will be informed of the termination. • The taxpayer may make a written request (with reasons) for the application to be withdrawn before a MAP agreement has been reached. Upon receiving such a request, the CA of the Treaty Partner will be notified of the withdrawal by the taxpayer.
<i>Supplemental</i> (Para. 21 to 24)	<p>Part IV of the Guidelines provides the following information:</p> <ul style="list-style-type: none"> • Presenting a case to the Malaysian CA to invoke MAP will not deprive a person of his right to appeal under S.99(1) of the Income Tax Act 1967

	<p>(ITA).</p> <ul style="list-style-type: none">• Confidentiality of taxpayer information is protected by the relevant provisions of the ITA and the applicable Tax Treaty.• The requirement to pay tax is not suspended by a request for CA assistance.• Further information can be obtained from the Office of MAP (full address stated in paragraph 24).
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Members may read the Guideline in full at the websites of the [Institute](#) and the [LHDNM](#).

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