

India Dispute Resolution Profile

(Last updated: 01 March 2019)

General Information

- **India tax treaties are available at:**

www.incometaxindia.gov.in

- **MAP request should be made to:**

Mr. Rasmi Ranjan Das (*MAP requests where the other country is situated in North America and Europe*)

Joint Secretary (Foreign Tax & Tax Research –I) and Competent Authority, Central Board of Direct Taxes, Ministry of Finance, Government of India
Room No. 803, 8th Floor, C-Wing, HUDCO-Vishala Building, Bhikaji Cama Place, R.K.Puram
New Delhi-110066, India
Telephone – 011-26108402 | Fax – 011-26177990 | e-mail: jsftrr1@nic.in

Mr. Rajat Bansal (*All MAP requests where the other country is situated anywhere in the world, except North America and Europe*)

Joint Secretary (Foreign Tax & Tax Research –II) and Competent Authority, Central Board of Direct Taxes, Ministry of Finance, Government of India
Room No. 804, 8th Floor, C-Wing, HUDCO-Vishala Building, Bhikaji Cama Place, R.K.Puram
New Delhi-110066, India
Telephone – 011-26104504,26177527 | Fax – 011-26104504 | e-mail: rajat.bansal64@nic.in

- **APA request should be made to:**

As above.

| s/n | | Response | Detailed explanation | Where publicly available information and guidance can be found |
|-------------------------------|---|--------------------------|--|---|
| A. Preventing Disputes | | | | |
| 1. | Are agreements reached by your competent authority to resolve difficulties or doubts arising as to the interpretation or application of your tax treaties in relation to issues of a general nature which concern, or which may concern, a category of taxpayers published? | See detailed explanation | Such agreements or understandings as and when reached are publicised through governmental Press Releases. | On official websites of the Government of India like www.incometaxindia.gov.in or on the official website of the Press Information Bureau. |
| 2. | Are bilateral APA programmes implemented? If yes: | Yes | - | - |
| a. | <ul style="list-style-type: none"> Are roll-back of APAs provided for in the bilateral APA programmes? | See detailed explanation | Roll-back of bilateral APAs is allowed for a period of four financial years immediately preceding the first financial year of the APA period. | - |
| b. | <ul style="list-style-type: none"> Are there specific timeline for the filing of an APA request? | See detailed explanation | In case of existing international transactions, the APA application has to be filed before the end of the financial year immediately preceding the first financial year of the APA period. In case of new international transactions, the APA application has to be filed any time before the commencement of the new transaction. | - |
| c. | <ul style="list-style-type: none"> Are rules, guidelines and procedures on how taxpayers can access and use bilateral APAs, including the specific information and documentation that | See detailed explanation | All these details are available on the official website of the Income-tax Department of India. | Income-tax Act, 1961, Income-tax Rules, 1962, FAQs on APAs and Circular No. 10 of 2015, dated 10 th June, 2015 on rollback related issues are all available on the |

| s/n | | Response | Detailed explanation | Where publicly available information and guidance can be found |
|-----|---|--------------------------|---|---|
| | should be submitted in a taxpayer's request for bilateral APA assistance, publicly available? | | | website www.incometaxindia.gov.in |
| d. | <ul style="list-style-type: none"> Are there any fees charged to taxpayers for a bilateral APA request? | See detailed explanation | <p>Fees are separately charged for APA and Rollback requests, respectively, as detailed below.</p> <p>For APAs: Where the value of International Transactions in the APA period is up to Rs. 100 Crore (Rs. 1 Billion), the fee payable is Rs. 10 Lakh (Rs. 1 Million). If the said value is between Rs. 100 Crore to Rs. 200 Crore (Rs. 1 to 1.5 Billion), the fee payable is Rs. 15 Lakh (Rs. 1.5 Million). If the said value exceeds Rs. 200 Crore (Rs. 2 Billion), the fee payable is Rs. 20 Lakh (Rs. 2 Million).</p> <p>For Rollback of APAs: A fixed fee of Rs. 5 Lakh (Rs. 0.5 Million) is charged for each Rollback request.</p> | - |
| e. | <ul style="list-style-type: none"> Are statistics relating to bilateral APAs publicly available? | Yes | - | On official websites of the Government of India like www.incometaxindia.gov.in or on the official website of the Press Information Bureau. |
| 3. | Is training provided to your officials involved in the auditing /examination of taxpayers to ensure that any assessments made by them are in accordance with the provisions of your tax treaties? | Yes | - | - |

| s/n | | Response | Detailed explanation | Where publicly available information and guidance can be found |
|-----|---|--------------------------|---|--|
| 4. | Is other information available on preventing tax treaty-related disputes? | See detailed explanation | All protocols and agreements made for the purposes of implementation of tax treaties are available along with treaties. | www.incometaxindia.gov.in |

Notes:

1. An APA is an “arrangement that determines, in advance of controlled transactions, an appropriate set of criteria (e.g. method, comparables and appropriate adjustments thereto, critical assumptions as to future events) for the determination of the transfer pricing for those transactions over a fixed period of time”. (see definition of APA in the *OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations* (“Transfer Pricing Guidelines”).)
2. Situations may arise in which the issues resolved through an APA are relevant with respect to previous filed tax years not included within the original scope of the APA. The concept of “roll-back” is further elaborated in paragraph 4.136 of Section F (Advance pricing arrangement) of Chapter IV of the Transfer Pricing Guidelines and in paragraph 69 of Section D.4.2 (Possible retrospective application (“Roll back”)) of the Annex to Chapter IV (Guidelines for Conducting Advance Pricing Arrangements under the Mutual Agreement Procedure (“MAP APAs”)) of the Transfer Pricing Guidelines. Simply put, the “roll-back” of the APA is understood to mean that the outcome of the APA is applied to previous filed tax years not included within the original scope of the APA.

| s/n | | Response | Detailed explanation | Where publicly available information and guidance can be found |
|--|---|--------------------------|---|--|
| B. Availability and Access to MAP | | | | |
| 5. | Are transfer pricing cases covered within the scope of MAP? | Yes | - | - |
| 6. | Are issues relating to the application of treaty anti-abuse provision covered within the scope of MAP? | Yes | - | - |
| 7. | Are issues relating to the application of domestic anti-abuse provision covered within the scope of MAP? | See detailed explanation | A case can be taken up under MAP when “tax is not in accordance with the treaty.” | - |
| 8. | Are issues where there is already an audit settlement between the tax authority and the taxpayer covered within the scope of MAP? | See detailed explanation | MAP can be accessed in cases where audit settlement, if any, has been reached during audit proceedings. | - |
| 9. | Are double taxation cases resulting from bona fide taxpayer initiated foreign adjustments covered within the scope of MAP? | Yes | - | - |
| 10. | Are there any other treaty related issues not covered under s/n 5 to 9 which are not within the scope of MAP? | See detailed explanation | All cases which satisfy the conditions for invoking MAP are covered within the scope of MAP. | - |
| 11. | Are taxpayers allowed to request MAP assistance in cases where the taxpayer has sought to resolve the issue under dispute via the judicial and administrative remedies provided by the domestic law of your jurisdiction? | Yes | - | - |

| s/n | | Response | Detailed explanation | Where publicly available information and guidance can be found |
|-----|---|--------------------------|---|--|
| 12. | Are taxpayers allowed to request for MAP assistance in cases where the issue under dispute has already been decided via the judicial and administrative remedies provided by the domestic law of your jurisdiction? | Yes | - | - |
| 13. | Are rules, guidelines and procedures on how taxpayers can access and use MAP, including the specific information and documentation that should be submitted in a taxpayer’s request for MAP assistance, publicly available? | See detailed explanation | The Income-tax Rules, 1962, containing the procedure and rules governing implementation of MAP, are available in public domain. However, detailed guidelines are under preparation in accordance with the minimum standards laid down in the Final Report on Action 14 of the BEPS Project. | www.incometaxindia.gov.in |
| 14. | Are there specific timeline for the filing of a MAP request? | See detailed explanation | The timelines are provided in the relevant tax treaty for invoking MAP. | - |
| 15. | Are guidance on multilateral MAPs publicly available? | No | - | - |
| 16. | Are tax collection procedures suspended during the period a MAP case is pending? | See detailed explanation | Such suspension of collection is available only where a bilateral agreement / Memorandum of Understanding (MoU) for providing such suspension exists between India and the other country. | - |
| 17. | Are there any fees charged to taxpayers for a MAP request? | No | - | - |

| s/n | | Response | Detailed explanation | Where publicly available information and guidance can be found |
|-----|---|----------|----------------------|--|
| 18. | Is there any other information available on availability and access to MAP? | No | - | - |

| s/n | | Response | Detailed explanation | Where publicly available information and guidance can be found |
|-----------------------------------|---|--------------------------|--|--|
| C. Resolution of MAP Cases | | | | |
| 19. | Are there any model timeframes for the steps taken by your competent authority from the receipt of a MAP case to the resolution of the case provided to taxpayers? | See detailed explanation | There was always the endeavour to resolve cases in a timely manner. Now the final report on Action 14 of the BEPS Project has laid down a standard to endeavour to resolve MAP cases in 24 months and it would be the endeavour of the Competent Authority to do so. | - |
| 20. | Are statistics relating to the time taken to resolve MAP cases publicly available? | No | - | - |
| 21. | Is interest or penalties resulting from adjustments made pursuant to a MAP agreement waived or dealt with as part of the MAP procedure? | No | - | - |
| 22. | Are the roles and responsibility of the MAP office publicly available, for example, is the mission statement of the MAP office available in the <i>annual</i> report of the organisation? | See detailed explanation | Roles and responsibilities of MAP office are generally known. In addition, a guidance note in accordance with element 2.1 of minimum standards in the final report on Action 14 of the BEPS Project is under preparation. There is no mission statement as such. | - |
| 23. | Is MAP arbitration a mechanism currently available for the resolution of tax treaty related disputes in any of your tax treaties? If not: | No | - | - |
| a. | <ul style="list-style-type: none"> Are there any legal limitations in your | See detailed | Tax treaties entered into by India do not | - |

| s/n | | Response | Detailed explanation | Where publicly available information and guidance can be found |
|-----|---|--------------------------|---|--|
| | domestic law (for example in your constitution) to include MAP arbitration in your tax treaties? | explanation | provide for arbitration. | |
| b. | <ul style="list-style-type: none"> Does your treaty policy allow you to include MAP arbitration in your tax treaties? | No | - | - |
| 24. | <p>Is the explanation of the relationship between the MAP and domestic law administrative and judicial remedies publicly available?</p> <p>If yes:</p> | No | - | - |
| a. | <ul style="list-style-type: none"> Does the guidance specifically address whether the competent authority considers that it is legally bound to follow a domestic court decision in the MAP or will not deviate from a domestic court decision as a matter of administrative policy or practice? | - | - | - |
| 25. | Are taxpayers allowed to request for multi-year resolution through the MAP of recurring issues with respect to filed tax years? | See detailed explanation | A taxpayer is entitled to seek MAP assistance for every assessment year in respect of which he considers that there is a tax which is not in accordance with the treaty, subject to fulfilment of conditions under Article 25(1). | - |

| s/n | | Response | Detailed explanation | Where publicly available information and guidance can be found |
|-----|--|--------------------------|---|---|
| 26. | Do all your jurisdiction’s tax treaties contain a provision which would oblige your jurisdiction to make corresponding adjustments or to grant access to the MAP with respect to the economic double taxation that may otherwise result from a primary transfer pricing adjustment (i.e. is paragraph 2 of Article 9 of the OECD Model Tax Convention or the UN Model Double Taxation Convention included in all of your jurisdiction’s tax treaties)? | See detailed explanation | Most of the Indian tax treaties already include Paragraph (2) of Article 9 for corresponding adjustment. Further, it is a policy of India to endeavour to include this provision in all its treaties. | - |
| 27. | Is there any other information available on resolution of MAP cases? | See detailed explanation | Periodic statistical reports are issued in the form of press releases to provide information on MAP case resolutions. | On official websites of the Government of India like www.incometaxindia.gov.in or on the official website of the Press Information Bureau. |

| s/n | | Response | Detailed explanation | Where publicly available information and guidance can be found |
|--|--|----------|----------------------|--|
| D. Implementation of MAP Agreements | | | | |
| 28. | Where the agreement reached by your competent authority through the MAP process leads to additional tax to be paid by your taxpayer, is there publicly available information on the timeframe the taxpayer could expect its tax position to be amended to reflect the agreement reached by the competent authority and/or for the additional tax to be paid? | Yes | - | The Income-tax Rules, 1962 has this information and it can be accessed at www.incometaxindia.gov.in |
| 29. | Where the agreement reached by your competent authority through the MAP process leads to a refund of the tax due or paid by your taxpayer, are there publicly available information on the timeframe the taxpayer could expect its tax position to be amended to reflect the agreement reached by the competent authority and/or for a refund of the tax paid? | Yes | - | The Income-tax Rules, 1962 has this information and it can be accessed at www.incometaxindia.gov.in |
| 30. | Are all mutual agreements reached through MAP implemented notwithstanding any time limits in your domestic law? | Yes | - | - |
| 31. | Is there any other information available on the implementation of MAP agreements? | No | - | - |