

South Africa Dispute Resolution Profile

(Last updated: 12 October 2018)

General Information

- **South Africa's tax treaties are available at:**

<http://www.sars.gov.za/Legal/International-Treaties-Agreements/DTA-Protocols/Pages/default.aspx>

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

South African Revenue Service, Legal Counsel, Legislative Research and Development
Private Bag X923, Pretoria, 0001
Tel: +27 12 422 5143 / Fax: +27 12 647 2849

Attribution of business profits to a permanent establishment/Transfer pricing MAP cases:

Mr Franz Tomasek, Group Executive: Legislative Research and Development
Legal Counsel, South African Revenue Service
Fax: +27 12 647 2849 Email: TransferPricingMAP@sars.gov.za

All other MAP cases:

Ms Oshna Maharaj, Senior Manager: International Development and Treaties
Legal Counsel, South African Revenue Service
Fax: +27 12 647 2849 Email: SARSMAP@sars.gov.za

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

South Africa does not have an APA programme in place.

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?	No	-	-
2.	Are bilateral APA programmes implemented? If yes:	No	-	-
a.	<ul style="list-style-type: none"> Are roll-back of APAs provided for in the bilateral APA programmes? 	-	-	-
b.	<ul style="list-style-type: none"> Are there specific timeline for the filing of an APA request? 	-	-	-
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 should be submitted in a taxpayer's request for bilateral APA assistance, publicly available? 	-	-	-
d.	<ul style="list-style-type: none"> Are there any fees charged to taxpayers for a bilateral APA request? 	-	-	-
e.	<ul style="list-style-type: none"> Are statistics relating to bilateral APAs publicly available? 	-	-	-

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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	The International Development and Treaties section provides workshops on the interpretation and application of Double Taxation Agreements (DTAs) from a legal perspective for the South African Revenue Service.	The training materials are not published.
4.	Is other information available on preventing tax treaty-related disputes?	Yes	-	A comprehensive Guidance Note on MAPs can be found on the following path: www.sars.gov.za > Legal Counsel > International Treaties & Agreements > Double Taxation Agreements & Protocols > Mutual Agreements Procedure (MAPs) or http://www.sars.gov.za/AllDocs/OpsDocs/Guides/LAPD-IT-G24%20-%20Guide%20on%20Mutual%20Agreement%20Procedures.pdf .

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.

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B. Availability and Access to MAP				
5.	Are transfer pricing cases covered within the scope of MAP?	Yes	-	<p>The information at http://www.sars.gov.za/Legal/International-Treaties-Agreements/DTA-Protocols/Pages/Mutual-Agreement-Procedure.aspx,</p> <p>Refer to 2.1.3 –Transfer pricing mutual agreement procedure cases, on page 10 of the Guide on Mutual Agreement Procedures at http://www.sars.gov.za/AllDocs/OpsDocs/Guides/LAPD-IT-G24%20-%20Guide%20on%20Mutual%20Agreement%20Procedures.pdf and http://www.sars.gov.za/AllDocs/LegalDoclib/Agreements/LAPD-IntA-DTA-2015-03%20-%20Minimum%20Information%20Requirements%20for%20MAPs.pdf. refers to transfer pricing cases.</p>
6.	Are issues relating to the application of treaty anti-abuse provision covered within the scope of MAP?	Yes	-	Refer to 3.4 – Right to access the mutual agreement procedure when domestic or treaty-based anti-abuse rules have been applied, on page 15 of the Guide on Mutual Agreement Procedures .
7.	Are issues relating to the application of domestic anti-abuse provision covered within the scope of MAP?	Yes	-	Refer to 3.4 – Right to access the mutual agreement procedure when domestic or treaty-based anti-abuse rules have been applied, on page 15 of the Guide on Mutual Agreement Procedures .

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8.	Are issues where there is already an audit settlement between the tax authority and the taxpayer covered within the scope of MAP?	Yes	-	Refer to 3.3 – Objection, alternative dispute resolution and audit settlements, on page 13 and 14 of the Guide on Mutual Agreement Procedures .
9.	Are double taxation cases resulting from bona fide taxpayer initiated foreign adjustments covered within the scope of MAP?	Yes	-	Refer to 7.2 – Issues related to self-initiated foreign adjustments, on page 25 of the Guide on Mutual Agreement Procedures .
10.	Are there any other treaty related issues not covered under s/n 5 to 9 which are not within the scope of MAP?	No	-	-
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	-	Refer to 3.3 – Objection, alternative dispute resolution and audit settlements, on pages 13 and 14 of the Guide on Mutual Agreement Procedures .
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 in respect of administrative remedies. Yes in respect of judicial remedies, within the constraints of judicial decisions handed down.	There is a distinction between the administrative decisions (decision by SARS on an objection against an assessment) and judicial decisions (decisions by the Tax Court or higher courts). A MAP cannot override a judicial decision in the domestic context. Access to MAP will be blocked if a settlement is reached through the independent settlement procedure.	Refer to 3.3 – Objection, alternative dispute resolution and audit settlements, on pages 13 and 14 of the Guide on Mutual Agreement Procedures .

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		No in respect of settlements reached through independent settlement procedure.		
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?	Yes	-	<p>Guide on Mutual Agreement Procedures http://www.sars.gov.za/AllDocs/OpsDocs/Guides/LAPD-IT-G24%20-%20Guide%20on%20Mutual%20Agreement%20Procedures.pdf at</p> <p>Other document requirements can be found on the following path: www.sars.gov.za > Legal Counsel > International Treaties & Agreements > Double Taxation Agreements & Protocols > Mutual Agreements Procedure (MAPs), or http://www.sars.gov.za/Legal/International-Treaties-Agreements/DTA-Protocols/Pages/Mutual-Agreement-Procedure.aspx. and http://www.sars.gov.za/AllDocs/LegalDoclib/Agreements/LAPD-IntA-DTA-2015-03%20-%20Minimum%20Information%20Requirements%20for%20MAPs.pdf.</p>
14.	Are there specific timeline for the filing of a MAP request?	Yes	The DTA will stipulate the timeline for the filing of a MAP request.	Refer to 3.2 – Time limits for requesting a mutual agreement procedure, on pages 12 and 13 of the <u>Guide on Mutual Agreement Procedures</u> .

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				The information at http://www.sars.gov.za/AllDocs/LegalDoclib/Agreements/LAPD-IntA-DTA-2015-03%20-%20Minimum%20Information%20Requirements%20for%20MAPs.pdf refers taxpayer to the DTAs.
15.	Are guidance on multilateral MAPs publicly available?	Yes	-	Refer to 7.6 – Multilateral mutual agreement procedures, on page 27 of the <u>Guide on Mutual Agreement Procedures</u> .
16.	Are tax collection procedures suspended during the period a MAP case is pending?	Yes	Suspension of tax collection procedures may also be considered if the requirements of section 164 of the Tax Administration Act, 2011, are met.	Refer to 6.1 – Suspension of payment pending mutual agreement procedure outcome, on page 24 of the <u>Guide on Mutual Agreement Procedures</u> .
17.	Are there any fees charged to taxpayers for a MAP request?	No	-	-
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?	Yes	-	Refer to 5 – Concluding a mutual agreement procedure request, on page 22 of the <u>Guide on Mutual Agreement Procedures</u> .
20.	Are statistics relating to the time taken to resolve MAP cases publicly available?	Yes	South Africa submits its statistics for all MAP cases to the OECD for publication.	-
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	Adjustments to the amount of interest and penalties will follow from any adjustments to the underlying tax involved.	Refer to 5.5 – Penalties and interest, on page 24 of the <u>Guide on Mutual Agreement Procedures</u> .
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?	Yes	-	Refer to 1.4 – The role of a competent authority, on page 7 of the <u>Guide on Mutual Agreement Procedures</u> .
23.	Is MAP arbitration a mechanism currently available for the resolution of tax treaty related disputes in any of your tax treaties? If not:	Yes	An arbitration provision is included in the DTAs with Canada (1997), Netherlands (2008) and Switzerland (2009).	Refer to 7.4 – South Africa’s position on mutual agreement procedure arbitration, on page 26 of the <u>Guide on Mutual Agreement Procedures</u> .
a.	<ul style="list-style-type: none"> Are there any legal limitations in your domestic law (for example in your constitution) to include MAP arbitration in your tax treaties? 	No	-	-

s/n		Response	Detailed explanation	Where publicly available information and guidance can be found
b.	<ul style="list-style-type: none"> Does your treaty policy allow you to include MAP arbitration in your tax treaties? 	Yes	Voluntary arbitration will be considered on a treaty by treaty basis.	-
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>	Yes	-	Refer to 3.3 – Objection, alternative dispute resolution and audit settlements, on page 13 and 14 of the <u>Guide on Mutual Agreement Procedures</u> .
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? 	Yes	-	Refer to 3.3 – Objection, alternative dispute resolution and audit settlements, on page 13 and 14 of the <u>Guide on Mutual Agreement Procedures</u> .
25.	Are taxpayers allowed to request for multi-year resolution through the MAP of recurring issues with respect to filed tax years?	Yes	-	Refer to 4.4 – Mutual agreement procedure request for multiple tax years and recurring issues, on page 19 of the <u>Guide on Mutual Agreement Procedures</u> .
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	No	Our current DTAs with Brazil (2006), Germany (1975), Grenada (1960), Israel (1980), Italy (1999), Malawi (1971), Sierra Leone (1960), Zambia (1956) and Zimbabwe (1965) do not have a provision that is the same or substantively the same as Article 9(2) of the OECD Model Tax Convention or the UN Model Double Taxation Convention.	Refer to 2.1.3 –Transfer pricing mutual agreement procedure cases, on page 10 of the <u>Guide on Mutual Agreement Procedures</u> .

s/n		Response	Detailed explanation	Where publicly available information and guidance can be found
	Taxation Convention included in all of your jurisdiction’s tax treaties)?			
27.	Is there any other information available on resolution of MAP cases?	No	-	-

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?	No	-	-
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?	No	-	-
30.	Are all mutual agreements reached through MAP implemented notwithstanding any time limits in your domestic law?	No	If the MAP Article in the DTA does not provide for the limitation period under the domestic law to be overridden by the DTA then the MAP cannot be implemented if the MAP request exceeds the domestic limitation periods of 3 or 5 years. However, in terms of section 99(2)(c) of the Tax Administration Act, 2011, the South African Revenue Service and taxpayer	Refer to 3.2 – Time limits for requesting a mutual agreement procedure, on pages 12 and 13 of the <u>Guide on Mutual Agreement Procedures</u> .

s/n		Response	Detailed explanation	Where publicly available information and guidance can be found
			may agree, prior to the expiry of the domestic limitation period, to extend the limitation period.	
31.	Is there any other information available on the implementation of MAP agreements?	No	-	-