

India Dispute Resolution Profile
(Last Updated: 8 December 2020)

General Information

- India tax treaties are available at:

<http://www.incometaxindia.gov.in/Pages/international-taxation/dtaa.aspx>

- MAP request should be made to:

Mr. Rasmi Ranjan Das [MAP requests where the other country is situated in North America (including Caribbean Islands) and Europe] Joint Secretary (Foreign Tax & Tax Research –I) and Competent Authority, Central Board of Direct Taxes, Department of Revenue, 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: jsfttr1@nic.in

Mr. Rajesh Kumar Bhoot [All MAP requests where the other country is situated anywhere in the world, except North America (including Caribbean Islands) and Europe] Joint Secretary (Foreign Tax & Tax Research –II) and Competent Authority, Central Board of Direct Taxes, Department of Revenue, 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
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- Bilateral 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 Circulars and, depending on the nature of clarifications, through Press Releases.	On official websites of the Government of India like www.incometaxindia.gov.in
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 	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 10th June, 2015 on rollback related issues are all

	that should be submitted in a taxpayer’s request for bilateral APA assistance, publicly available?			available on the 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
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	-	-

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
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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	-	-
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?	Yes	India shall provide access to MAP in respect of specific types of cases/situations if they result in taxation not in accordance with the relevant DTAA's (details are in the MAP guidance). India shall provide access to MAP even in a situation where the Indian tax authorities apply domestic anti-abuse provisions.	-
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	Taxpayers who have filed settlement application with the Income Tax Settlement Commission (ITSC) are not allowed to request for MAP assistance on the same issues, if the settlement application has been admitted by the ITSC. Further details are available in the MAP guidance.	https://www.incometaxindia.gov.in/news/map_guidance_7_8_2020.pdf
9	Are double taxation cases resulting from bona fide taxpayer	No	A resident assessee aggrieved by any action of the tax authorities of any country outside India can apply for MAP in India. The Competent Authority of India shall act upon a reference from the Competent Authority of another country	-

	initiated foreign adjustments covered within the scope of MAP?		with regard to any action taken by any income-tax authority in India. Specific particulars of MAP rules are in Rule 44G and Rule 44H of IT Rules, 1962.	
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?	See detailed explanation	Yes, the taxpayer is allowed to request MAP assistance in such cases. However, if the Income Tax Appellate Tribunal (ITAT: an independent statutory appellate body outside the jurisdiction of the Indian tax authorities, and highest fact-finding body for tax matters) has decided an issue on merits in an order, Indian MAP authorities will not deviate from such orders of ITAT for the relevant year. Further details can be found in the MAP guidance.	https://www.incometaxindia.gov.in/news/map_guidance_7_8_2020.pdf
12	Are taxpayers allowed to request for MAP assistance in cases where the issue under dispute has already been	See detailed explanation	Part B of the MAP guidance discusses access and denial of access to MAP in great detail, and covers numerous possible scenarios. More specifically, taxpayers who have filed settlement application with the Income Tax Settlement Commission (ITSC) are not allowed to request for MAP assistance on the same	https://www.incometaxindia.gov.in/news/map_guidance_7_8_2020.pdf

	decided via the judicial and administrative remedies provided by the domestic law of your jurisdiction?		issues, if the settlement application has been admitted by the ITSC. Taxpayers are also not allowed to request for MAP assistance where the Authority for Advance Rulings (AAR) has pronounced an advance ruling, and such ruling covers the issues that are sought to be included in the MAP application.	
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. Further, India's MAP guidance providing detailed information in this regard is also publicly available.	https://www.incometaxindia.gov.in/news/map_guidance_7_8_2020.pdf
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?	Yes	Section (IV) of Part A of MAP guidance provides guidance on multilateral MAPs.	https://www.incometaxindia.gov.in/news/map_guidance_7_8_2020.pdf
16	Are tax collection procedures suspended during	See detailed explanation	Such suspension of collection is available only where a bilateral agreement / Memorandum of Understanding (MoU) for	-

	the period a MAP case is pending?		providing such suspension exists between India and the other country.	
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?	Yes	Part B of MAP guidance gives detailed information on availability and access to MAP.	https://www.incometaxindia.gov.in/news/map_guidance_7_8_2020.pdf

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	It would be the endeavor of the Indian Competent Authority to resolve MAP cases in 24 months.	https://www.incometaxindia.gov.in/news/map_guidance_7_8_2020.pdf
20.	Are statistics relating to the time taken to resolve MAP cases publicly available?	See detailed explanation	India reports its MAP statistics to OECD in pursuance of BEPS Action 14. The statistics are published by the Centre for Tax Policy and Administration of OECD on its official website.	http://www.oecd.org/ctp/dispute/mutual-agreement-procedure-statistics.htm
21.	Is interest or penalties resulting from adjustments made pursuant to a MAP agreement waived or dealt with as part of the MAP procedure?	See detailed explanation	In most of the disputes on the quantum of income, that are resolved under MAP, there are consequential issues of interest and penalty. The CAs of India do not have the mandate to consider such consequential issues and negotiate disputes arising from such issues. These are to be administered under the domestic laws. However, where the amount of interest and penalties are linked to the quantum of income, such interest and penalties shall be varied in the same proportion as the variation in the quantum of income due to a MAP resolution, in accordance with the domestic law. It may be noted that there are provisions of fees/penalty under Indian Income-tax Act which are not connected to the quantum	-

			of income and, accordingly, those would not be affected by the resolution under MAP.	
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 annual report of the organisation?	See detailed explanation	Roles and responsibilities of MAP office are generally known. In addition, the MAP guidance details the responsibilities of the MAP office. There is no mission statement as such.	https://www.incometaxindia.gov.in/news/map_guidance_7_8_2020.pdf
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 domestic law (for example in your constitution) to include MAP arbitration in your tax treaties? 	See detailed explanation	Tax treaties entered into by India do not provide for arbitration.	-
b.	<ul style="list-style-type: none"> Does your treaty policy 	No	-	-

	allow you to include MAP arbitration in your tax treaties?			
24.	Is the explanation of the relationship between the MAP and domestic law administrative and judicial remedies publicly available? If yes:	Yes	-	-
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 	Yes	-	https://www.incometaxindia.gov.in/news/map_guidance_7_8_2020.pdf

	policy or practice?			
b.	<ul style="list-style-type: none"> Are taxpayers allowed to request for multiyear 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 fulfillment of conditions under Article 25(1) of the relevant treaty.	https://www.incometaxindia.gov.in/news/map_guidance_7_8_2020.pdf
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	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 endeavor to include this provision in all its treaties.	

	Convention or the UN Model Double Taxation Convention included in all of your jurisdiction’s tax treaties)?			
27.	Is there any other information available on resolution of MAP cases?	See detailed explanation	Periodic statistics on resolution of MAP cases are shared with OECD under India’s commitment to BEPS Action 14. OECD publishes these statistics on its official website annually.	http://www.oecd.org/ctp/dispute/mutual-agreement-procedure-statistics.htm

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 and MAP guidance have this information and it can be accessed at https://www.incometaxindia.gov.in/news/map_guidance_7_8_2020.pdf
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,	Yes	-	The Income-tax Rules, 1962 and MAP guidance have this information and it can be accessed at https://www.incometaxindia.gov.in/news/map_guidance_7_8_2020.pdf

	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?			
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?	Yes	The Income Tax Rules, 1962 contains information related to implementation of MAP agreements	https://www.incometaxindia.gov.in/news/map_guidance_7_8_2020.pdf