

Malaysia Dispute Resolution Profile

(Last updated: 18.04.2017)

General Information

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

www.hasil.gov.my

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

All formal requests for MAP other than BAPA/MAPA should be made in writing and addressed to:

The Competent Authority, Tax Division , Ministry of Finance

6th Floor, Centre Block , Precint 2, Federal Administration Centre, 62592 Putrajaya, Malaysia

A copy of the request should at the same time be submitted to the Office of MAP at the following address:

The Competent Authority, Department of International Taxation, Inland Revenue Board of Malaysia Headquarters

Level 12, Menara Hasil, Persiaran Rimba Permai, Cyber 8, 63600 Cyberjaya, Selangor, Malaysia

Tel: +603–83138888 / Fax: +603-83137848 or +603-83137849

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

Director, Department of International Taxation, Inland Revenue Board of Malaysia Headquarters

Level 12, Menara Hasil, Persiaran Rimba Permai, Cyber 8, 63600 Cyberjaya, Selangor, Malaysia

Tel: +603–83138888 / Fax: +603-83137848 or +603-83137849

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:	Yes	Income Tax (Advance Pricing Arrangement) Rules 2012 [P.U. (A) 133] & Advance Pricing Arrangement Guidelines 2012 are available at the Official Portal of Inland Revenue Board of Malaysia.	Income Tax (Advance Pricing Arrangement) Rules 2012 [P.U. (A) 133] http://lampiran.hasil.gov.my/pdf/pdfam/Kaedah_Kaedah_Cukai_Pendapatan_Perkiraan_Penentuan_Harga_Awal_2012.pdf Advance Pricing Arrangement Guidelines 2012 http://lampiran.hasil.gov.my/pdf/pdfam/MalaysianAPAGuidelines2012.pdf
a.	<ul style="list-style-type: none"> Are roll-back of APAs provided for in the bilateral APA programmes? 	Yes	Roll-back for bilateral APAs are applicable for years concerned. It will be reviewed by 2017.	Paragraph 25 of the Advance Pricing Arrangement Guidelines 2012 http://lampiran.hasil.gov.my/pdf/pdfam/MalaysianAPAGuidelines2012.pdf

s/n		Response	Detailed explanation	Where publicly available information and guidance can be found
b.	<ul style="list-style-type: none"> Are there specific timeline for the filing of an APA request? 	Yes	<p>A request for a pre-filing meeting should be made in writing twelve months prior to the first day of the proposed covered period. Upon receiving notification from IRBM on the agreement for APA filing, the application should be made within two months after the receipt of the notification.</p>	<p>Rule 4 & 5 of the Income Tax (Advance Pricing Arrangement) Rules 2012 [P.U. (A) 133] http://lampiran.hasil.gov.my/pdf/pdfam/Kaedah_Kaedah_Cukai_Pendapatan_Perkiraan_Penentuan_Harga_Awal_2012.pdf</p> <p>Paragraph 11 & 15 of the Advance Pricing Arrangement Guidelines 2012 http://lampiran.hasil.gov.my/pdf/pdfam/MalaysianAPAGuidelines2012.pdf</p>
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? 	Yes	<p>The Guideline and procedures are available in the APA Rules and Guidelines. Additionally, the information and documentation required are cover under Rule 4 of the APA Rules and Paragraph 11 of the APA Guidelines</p>	<p>Income Tax (Advance Pricing Arrangement) Rules 2012 [P.U. (A) 133] http://lampiran.hasil.gov.my/pdf/pdfam/Kaedah_Kaedah_Cukai_Pendapatan_Perkiraan_Penentuan_Harga_Awal_2012.pdf</p> <p>Advance Pricing Arrangement Guidelines 2012 http://lampiran.hasil.gov.my/pdf/pdfam/MalaysianAPAGuidelines2012.pdf</p>
d.	<ul style="list-style-type: none"> Are there any fees charged to taxpayers for a bilateral APA request? 	See detailed explanation	<p>There is no processing fee charged to taxpayers for any Bilateral APA request. However, taxpayers have to bear any overseas travelling and accommodation expenses incurred</p>	<p>Paragraph 36 of the Advance Pricing Arrangement Guidelines 2012 http://lampiran.hasil.gov.my/pdf/pdfam/MalaysianAPAGuidelines2012.pdf</p>

Malaysia Dispute Resolution Profile – Preventing Disputes

s/n		Response	Detailed explanation	Where publicly available information and guidance can be found
			by the Malaysian government in relation to the Bilateral APA. It will be reviewed by 2017.	
e.	<ul style="list-style-type: none"> Are statistics relating to bilateral APAs publicly available? 	No	-	-
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 training programmes and materials are not publicly available.
4.	Is other information available on preventing tax treaty-related disputes?	No	-	-

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.

Malaysia Dispute Resolution Profile – Availability and access to MAP

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?	See detailed explanation	Although all treaties signed by Malaysia cover Article 25, only 23 treaties are with Article 9(2) equivalent. Some of the treaties will be reviewed.	MAP Guidelines http://lampiran2.hasil.gov.my/pdf/pdfam/MAP_Guidelines.pdf Malaysia DTAA http://www.hasil.gov.my/bt_goindex.php?bt_kump=5&bt_skum=5&bt_posi=4&bt_unit=1&bt_sequ=1
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?	No	-	-
8.	Are issues where there is already an audit settlement between the tax authority and the taxpayer covered within the scope of MAP?	Yes	-	-
9.	Are double taxation cases resulting from bona fide taxpayer initiated foreign adjustments covered within the scope of MAP?	Yes	-	-

Malaysia Dispute Resolution Profile – Availability and access to MAP

s/n		Response	Detailed explanation	Where publicly available information and guidance can be found
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	Section 102(1A) of the Income Tax Act 1967 : Where a taxpayer has requested for MAP assistance, the appeal made under provision of the domestic law will be put on hold until the determination of the MAP	Income Tax Act 1967 Paragraph 21 of the MAP Guidelines http://lampiran2.hasil.gov.my/pdf/pdfam/MAP_Guidelines.pdf
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?	No	Assessment that has been determined by the court, tax authority are bound by the decision of the court hence prevented from providing relief through MAP appeal.	-
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	The Guideline and procedures are available in the MAP Guidelines. Additionally, the information and documentation required are listed in Paragraph 8 of the MAP Guidelines	MAP Guidelines http://lampiran2.hasil.gov.my/pdf/pdfam/MAP_Guidelines.pdf

Malaysia Dispute Resolution Profile – Availability and access to MAP

s/n		Response	Detailed explanation	Where publicly available information and guidance can be found
14.	Are there specific timeline for the filing of a MAP request?	Yes		
15.	Are guidance on multilateral MAPs publicly available?	Yes	The treatment for multilateral MAP is similar with bilateral MAP.	-
16.	Are tax collection procedures suspended during the period a MAP case is pending?	No	-	-
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	-	-

Malaysia Dispute Resolution Profile – Resolution of MAP Cases

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?	No	The timeframes is currently being drafted.	-
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	Only roles and functions of MAP office are publicly available in the MAP Guidelines, but not in the form of a mission statement.	MAP Guidelines http://lampiran2.hasil.gov.my/pdf/pdfam/MAP_Guidelines.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:	See detailed explanation	Only one DTA contains arbitration mechanism.	-
a.	<ul style="list-style-type: none"> Are there any legal limitations in your domestic law (for example in your constitution) to include 	Yes	There is no provision for arbitration in domestic law.	-

Malaysia Dispute Resolution Profile – Resolution of MAP Cases

s/n		Response	Detailed explanation	Where publicly available information and guidance can be found
	MAP arbitration in your tax treaties?			
b.	<ul style="list-style-type: none"> Does your treaty policy allow you to include MAP arbitration in your tax treaties? 	No	-	The information is not available to public.
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	-	-
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	-	-
25.	Are taxpayers allowed to request for multi-year resolution through the MAP of recurring issues with respect to filed tax years?	Yes	-	-
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	No	<p>Although all treaties signed by Malaysia cover Article 25, only 23 treaties are with Article 9(2) equivalent.</p> <p>Some of the treaties will be</p>	<p>Malaysia DTAA</p> <p>http://www.hasil.gov.my/bt_goindex.php?bt_kump=5&bt_skum=5&bt_posi=4&bt_unit=1&bt_sequ=1</p>

Malaysia Dispute Resolution Profile – Resolution of MAP Cases

s/n		Response	Detailed explanation	Where publicly available information and guidance can be found
	Article 9 of the OECD Model Tax Convention or the UN Model Double Taxation Convention included in all of your jurisdiction’s tax treaties)?		reviewed.	
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	Following the timeframe recommended by the OECD, the amendments to be made no later than three months from exchange of the closing letter. In the process of reviewing MAP Guidelines.	-
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	In the process of reviewing MAP Guidelines.	-
30.	Are all mutual agreements reached through MAP implemented notwithstanding any time limits in your domestic law?	Yes	However, some DTAs have a time limit set for MAP adjustments.	-
31.	Is there any other information available on the implementation of MAP agreements?	No	-	-