

MULTILATERAL STRATEGIC PLAN ON MUTUAL AGREEMENT PROCEDURES: A VISION FOR CONTINUOUS MAP IMPROVEMENT

Preamble

1. A convergence of global developments is creating elevated levels of tax risk and uncertainty for both governments and taxpayers. Trends include the on-going globalization of business and a concomitant pressure on tax administrations to fulfil their respective mandates in an environment where international tax issues are increasingly complex and fiscally significant.
2. As governments in times of fiscal constraint increasingly scrutinize cross-border transactional flows to assure a strong revenue base, heightened pressure has been brought to bear on those charged under our global network of tax conventions as the authorities competent to ensure that the principles embodied in that network are properly applied to minimize incidents of double taxation, unintended double non-taxation and taxation otherwise not in accordance with applicable tax conventions.
3. In addition, multinational businesses striving to compete on the global economic stage are finding that matters of international taxation are best addressed through resolution models based on a high degree of cooperation and transparency. It is incumbent upon all tax administrations to develop and make available such models and to work together to improve and expand programs designed to resolve tax issues effectively and efficiently such that business can operate in an environment of greater tax certainty.
4. The MAP programs maintained by competent authorities to conduct the mutual agreement procedures established by our tax conventions are at the very heart of the global tax environment. The individual in each jurisdiction delegated the authority to conduct these procedures (the competent authority) assumes responsibility for significant aspects of the international tax environment in which all multinational businesses operate. The degree to which each competent authority is able to realize success, however, is closely dependent on the efforts of competent authority colleagues in all other jurisdictions.
5. The Forum on Tax Administration has determined that competent authorities from among the FTA-member countries shall form a forum (the FTA MAP Forum) to meet regularly to deliberate on general matters affecting all participants' programs for conducting mutual agreement procedures. Further, the FTA has determined that the MAP Forum shall work in accordance with a multilateral strategic plan to collectively improve the effectiveness of our mutual agreement procedures in order to meet the needs of both governments and taxpayers and so assure the critical role of those procedures in the global tax environment. This document is that strategic plan.

Statement of Vision and Commitment

The competent authorities participating in the FTA MAP Forum recognize that the purpose of the mutual agreement procedures, and thus the central mission of the competent authorities, is to ensure that the principles embodied in our global network of tax conventions are properly applied to minimize to the fullest possible extent incidents of double taxation, unintended double non-taxation and taxation otherwise not in accordance with the provisions of applicable tax conventions. It is the vision of all MAP Forum participants that the effectiveness of our mutual agreement procedures should be collectively improved in order to meet the needs of both governments and taxpayers and so assure the critical role of those procedures in the global tax environment, and that this can best be accomplished through the collaborative work of the MAP Forum in accordance with this Multilateral Strategic Plan.

6. The FTA MAP Forum may collaborate with other multilateral bodies to further its goals on an on-going basis. For example, the work of OECD's WP1 and WP6 will likely lead to important conceptual developments and recommendations that would assist the MAP Forum in its effort to bring about efficient and effective case resolution. Further, a Focus Group on Dispute Resolution has been formed by OECD's Working Party 1 to address Action 14 of the BEPS Action Plan. The Focus Group will review whether certain impediments to effective mutual agreement procedures require changes to be made to the OECD Model Tax Convention or to the Commentary. It is contemplated that the FTA MAP Forum will collaborate with this Focus Group to ensure that both practical and legal impediments to MAP case resolution are addressed.

7. The competent authorities endorsing this Strategic Plan and participating in the FTA MAP Forum (the Participating CAs) are committed to the work of the MAP Forum and to the goals reflected in the Strategic Plan. In this regard, the Participating CAs agree to undertake the following efforts, and to be accountable for these efforts to their MAP Forum colleagues:

- to advance the goals reflected in the Strategic Plan with respect to the application of the MAP provisions in the relevant tax conventions within their own tax administrations and to assist other tax administrations in so doing;
- to integrate enhanced intelligence into new strategies to advance MAP objectives and to monitor progress on specific MAP Forum initiatives; and
- to discuss openly and frequently with all other Participating CAs the specific goals of the Strategic Plan and to take full responsibility for progress toward these goals.

Areas of Strategic Focus

Resources

8. All competent authorities depend on having a staff of well-trained personnel with expertise in applying the principles embodied in our global network of tax conventions to resolve matters of double taxation, unintended double non-taxation and taxation otherwise not in accordance with applicable tax conventions. The number of expert personnel required will depend in particular on (1) the extent to which the competent authority's tax administration is engaged in audit activities resulting in adjustments to tax positions reported by resident and non-resident businesses and individuals and (2) the extent to which resident businesses and individuals are engaged in foreign business or investment activity exposing them to tax adjustments made by other tax administrations. Inadequate resources can impair substantially the ability of a competent authority to conduct effective mutual agreement procedures and consequently the ability of their partner competent authorities to conclude cases. Thus, it is critical that all competent authorities be allocated adequate staffing levels and other resources to meet workload demands.

9. Often a competent authority's primary challenge will be maintaining appropriate staffing levels to meet workload demand, but a competent authority should also take steps to ensure (1) adequate training programs to develop and/or enhance expertise and (2) personnel practices that do not result in frequent turnover of staff to the detriment of mutual agreement procedures.

10. The FTA MAP Forum will engage in efforts to address the resource challenges faced by competent authorities around the world.

Empowerment

11. The purpose of the mutual agreement procedures, and thus the central mission of the competent authorities, is to ensure that the principles embodied in our global network of tax conventions are properly applied to minimize to the fullest possible extent incidents of double taxation, unintended double non-taxation and taxation otherwise not in accordance with applicable tax conventions. In order for mutual agreement procedures to work effectively, it is critical that competent authorities be empowered to reach and implement an agreement in every case that fully accords with the principles embodied in the taxation conventions concluded by their respective governments.

12. The office and authority of competent authorities derive from those bilateral conventions and, in order to discharge their responsibilities effectively, competent authorities must not be unduly influenced or constrained by competing considerations derived from policies, practices, or goals associated with other offices within their administrations.

13. Tax administrations should ensure their governance arrangements respect the convention-based mandate of the competent authority and support the resolution of its MAP cases in accordance with accepted multilateral principles. Governance arrangements that cause the competent authority to bring into consideration other factors such as efforts to maximize revenue collection will necessarily impede that mandate and lead to difficult MAP discussions.

14. The FTA MAP Forum will engage in efforts to address the empowerment challenges faced by competent authorities around the world.

Relationships and Posture

15. The success of mutual agreement procedures critically depends on strong, collegial relationships, grounded in mutual trust, between and among competent authorities around the world. Mutual trust fosters an environment of cooperation and productivity, while a lack of trust fosters an environment of guardedness and suspicion leading to cumbersome resolution processes.

16. Relationships based on mutual trust should encourage competent authorities to adopt the appropriate posture at the MAP table, a posture based on bona fide behaviour that facilitates the achievement of principled solutions as quickly as possible. Interactions between competent authorities should result in principle-based resolution processes in which mutual satisfaction is achieved and not in tactic-laden negotiation processes in which winners and losers are identified. Practices such as withholding information, ignoring principles to achieve highly favourable results, or delaying or avoiding attempts to find mutually acceptable solutions should have no place at the MAP table.

17. The FTA MAP Forum will engage in efforts to address the mutual trust issue and to instil a strong sense of the appropriate mission among respective MAP teams.

Process Improvements

18. It is incumbent upon all competent authorities to seek continually process improvements to ensure that MAP cases are resolved as efficiently and effectively as possible. Processes that may have worked well in the past may not work well in the current environment or may be further improved through use of innovative approaches brought about through creative thinking or new technologies. The FTA MAP Forum will engage in discussions on such process improvements and will seek and pursue new multilateral initiatives to streamline and enhance processes to expedite MAP case resolution. Efforts will focus on the following process areas:

19. **Internal process improvements** – Each competent authority will work to ensure that its internal processes for both initiating and resolving MAP cases are as efficient as possible. Best practices (including description of individual MAP programs) will be shared among FTA MAP Forum participants.

20. **Case elevation** – Difficult cases in which little or no progress is being made should not languish at the staff level. For example, the FTA MAP Forum will discuss development of new processes for timely elevation of difficult cases to ensure that all means of resolution are explored as quickly as possible.

21. **Interaction with taxpayers and advisors** – The FTA MAP Forum will discuss ways to enhance and streamline the taxpayer's involvement in case resolution. Efforts will focus on (1) the potential use of bilateral or multilateral meetings in which taxpayers can present factual information to governments at the same time and (2) sharing best practices with respect to liaising with taxpayers and their advisors and informing them of case developments, as may be consistent with the provisions of the applicable convention.

22. **Early involvement** – The FTA MAP Forum will discuss ways to modify or enhance processes in order to anticipate and resolve in advance potential instances of double taxation or taxation otherwise not in accordance with the applicable tax conventions. For example, the MAP Forum will discuss ways APAs, joint audits, "roll forward" post-adjustment resolutions, and other techniques can be used to avoid traditional MAP cases.

23. **Multilateral Resolution** – Because many cases potentially impact the tax base of more than two jurisdictions, the FTA MAP Forum will discuss ways to use multilateral case resolution procedures to the fullest possible extent.

24. **Use of generally applicable agreements** – The FTA MAP Forum will discuss ways to avoid situations in which the same issue is raised on multiple cases. For example, the MAP Forum will consider the adoption of generally applicable approaches to the resolution of certain issues and, where possible, capturing such approaches in written agreements. Such agreements can also be used to establish procedures as to how to conduct MAP programs between the competent authorities.

Relationship with Audit Functions

25. The conduct of mutual agreement procedures can be hindered significantly by audit programs that are not aligned with international norms with respect to either principle or procedure. The FTA MAP Forum will discuss the complex interactions between competent authorities and their respective audit functions in order to identify best practices for ensuring that mutual agreement procedures are not burdened by wayward audit practices. Among topics to be addressed are the following:

26. **Position Influence** – Positions taken in audit are the starting point for most MAP cases. Ideally, each competent authority should be willing and able to review and, if necessary, reform those positions during the unilateral stage of a mutual agreement procedure. To be appropriately postured for resolution, the view expressed by a competent authority at the beginning of the bilateral stage of the procedure should be in line with the provisions of the applicable convention and the principles embodied in the global network of tax conventions.

27. **Access to MAP** – Tax conventions provide taxpayers facing potential double taxation with access to a mutual agreement procedure, and MAP access should not be manipulated by auditors (e.g., through threats of higher adjustments or by referring to penalties) if the taxpayer desires MAP resolution. In addition, the FTA MAP Forum will collaborate with the Focus Group on Dispute Resolution to ensure that both practical and legal impediments to MAP access (e.g., time limitations, documentation requirements and assertion of general anti-abuse rules or other “domestic-law” arguments) are addressed.

28. **Global Awareness** – All audit functions involved in adjusting taxpayer positions on international matters must be aware of (1) the potential for creating double taxation, (2) the impact of proposed adjustments on the tax base of one or more other jurisdictions, and (3) the processes and principles by which competing jurisdictional claims are reconciled by competent authorities. The FTA MAP Forum should encourage delivery of training on these matters. The FTA has prepared and approved a “Global Awareness Training Module” that may be used for that purpose.

Responsibility and Accountability

29. Tax administrations, acting through their competent authorities, have an obligation to ensure that the tax conventions to which their governments are signatories operate effectively so that taxpayers do not experience double taxation, unintended double non-taxation, and taxation otherwise not in accordance with the provisions of those conventions. Effective operation of the mutual agreement procedures is vital to the fulfilment of this obligation.

30. The Participating CAs believe that all competent authorities should take full responsibility for the proper functioning of mutual agreement procedures around the world. Tax conventions charge competent authorities with responsibility individually, but competent authorities must act in concert to address the problems they face together.

31. The Participating CAs believe that the competent authorities themselves must ensure effective and efficient mutual agreement procedures and that competent authorities can bring about MAP enhancement only through concentrated and sustained effort. The success of competent authorities in enhancing the mutual agreement procedures will depend primarily on open dialogue among competent authorities regarding MAP challenges, solutions and best practices. Accordingly, the Participating CAs agree that the FTA MAP Forum should take action in the areas of strategic focus described in this Strategic Plan and that the MAP Forum should review progress in these areas to ensure that MAP enhancement efforts are sustained over time.

Modification

32. This Strategic Plan may be modified from time to time by consensus of the FTA MAP Forum.