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Resolving issues that prevent a mutual agreement: Supplementary mechanisms for dispute resolution

Addendum

A Guide to the Mutual Agreement Procedure under the United Nations Model Double Taxation Convention between Developed and Developing Countries

Subcommittee on Dispute Resolution: Background Note*

* This paper was presented by Mr. Jacques Sasseville of the OECD Secretariat as a background document for the discussion on dispute settlement at the 4th Annual Session. It was presented in relation to the mandate of the subcommittee to cooperate with the OECD in the course of its work.

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Preface

At its 2007 meeting, the Committee of Experts on International Cooperation in Tax Matters (the Committee) considered recent developments in the area of dispute resolution, as well as possible changes to the United Nations Model Double Taxation Convention Between Developed and Developing Countries (the UN Model Tax Convention). According to its mandate[1], the Committee focused on questions in this area of specific interest to developing countries and countries in transition. Professor Robert Waldburger, as coordinator of the subcommittee on Dispute Resolution (the subcommittee), presented a paper on dispute resolution[2] to the Committee that raised a number of such questions.

The main conclusion of the 2007 meeting was that options for the resolution of disputes arising in the mutual agreement procedure (MAP), including arbitration, should be further considered by the subcommittee. It was also decided that the subcommittee should consider both mandatory and voluntary arbitration in its work. The subcommittee was accordingly asked to continue its activities in light of the views expressed in the 2007 meeting, particularly in relation to ways of improving MAP. As indicated in the summary record of the meeting (paragraphs 66-67 of document E/C.18/2007/19), it was noted that the offer made by the Organisation for Economic Co-operation and Development (OECD) and the European Union to assist with the work in this area had been accepted.

Pursuant to the conclusion that the subcommittee should consider other options for improving the mutual agreement procedure, this report presents a general guide to the MAP process, with the overall purpose of improving the understanding and functioning of the MAP. Such improved understanding should facilitate recourse to the MAP, in particular for tax administrations and taxpayers that have limited experience with that process, as well as the effective and efficient operation of the MAP. While the report builds on OECD work in this area[3], it has been drafted with a primary focus on the specific concerns of developing countries and countries in transition.

This report is primarily intended to provide tax administrations and taxpayers with basic information on the MAP and the context in which it operates. The following points should be kept in mind in understanding the report and its purposes:

- The report is intended solely for informational purposes. It does not purport to propose rules binding upon UN Member countries or otherwise to modify, restrict, or expand any rights or obligations contained in the provisions of any tax convention.

- Information contained in the report complements, and should not be considered a substitute for, the criteria, procedures, and guidance specified in the current version of the UN Model Tax Convention. To the extent that there are any statements or information in this report which appear to conflict or to be incompatible with a tax convention, or the UN Model Tax Convention or its Commentaries, then the latter guidance is controlling.

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[1] Economic and Social Council Resolution 2004/69.

[2] "Dispute Resolution" (E/C.18/2007/CRP.7).

[3] See, in particular, the OECD's Manual on Effective Mutual Agreement Procedures (MEMAP), which can be consulted at: http://www.oecd.org/document/26/0,3343,en_2649_37989739_36197402_1_1_1_1,00.html.

- The recommendations included in this report are based on international practice and experience and reflect views as to the most appropriate manner to deal with particular MAP processes and procedural issues. The order and length of discussion of a specific practice does not reflect on the priority or significance of such practice. In addition, although certain tax administrations and taxpayers have found that the implementation and application of these practices result in improved outcomes in many contexts, their appropriateness must be evaluated in light of the specific circumstances in which they are applied.

1. INTRODUCTION AND BACKGROUND

1.1. The purpose and importance of the mutual agreement procedure

A tax treaty or convention is an official agreement between two countries ("contracting states") that has as one of its primary purposes the prevention of the international double taxation that may arise when a specific transaction or taxpayer is subject to tax under the domestic tax laws of both contracting states. Such double taxation may discourage the free flow of international trade and investment and the transfer of technology, all of which play important complementary roles in the economic development process.

A tax convention seeks to prevent international double taxation by providing for a uniform allocation of taxing rights with respect to specific classes of income between the residence state (that is, a taxpayer's state of residence) and the source state (that is, the state where the relevant income is considered to arise). A tax convention will further provide a method through which double taxation will be eliminated in situations in which the convention permits both the residence state and the source state to tax an item of income.[4]

For example, the interest article of a tax convention may permit interest arising in one contracting state and paid to a resident of the other contracting state to be taxed in both the residence and source states, with the tax charged in the source state limited to an agreed-upon rate. Double taxation is then eliminated by the relief from double tax article, under which the residence state will generally allow a deduction or credit against its tax for the tax paid to the source state, to the extent that the source state properly taxed the interest income under the convention.

In certain cases, however, international double taxation may arise even where there is a tax convention between two countries. Such double taxation may result, for example, from the incorrect application of the convention by one of the contracting states, or from a disagreement between the contracting states as to how the convention should apply in a particular situation or context.

In order to resolve such issues, tax conventions typically provide for a mutual agreement procedure like that provided in Article 25 (Mutual Agreement Procedure) of the United Nations Model Double Taxation Convention between Developed and Developing Countries (the UN Model Tax Convention).

The mutual agreement procedure (MAP) is the mechanism that contracting states use to resolve any disputes or difficulties that arise in the course of implementing and applying the convention. The MAP thereby ensures that these disputes will not frustrate the convention's goal of preventing international double taxation.

The MAP provision generally does not compel the competent authorities to reach an agreement, but only to use their best efforts to do so. Certain supplementary dispute resolution mechanisms have accordingly been developed to facilitate final agreement in the MAP.

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[4] Where the provisions of a tax convention permit both contracting states (that is, the residence state and the source state) to tax an item of income, double taxation is eliminated through either the "exemption method" or the "credit method". See Articles 23A (Exemption Method) and 23 B (Credit Method) of the UN Model Tax Convention. Under the exemption method, the residence state will generally exempt from its tax an item of income that, in accordance with the provisions of the convention, may be taxed in the source state. Under the credit method, where an item of income may, in accordance with the provisions of the convention, be taxed in the source state, the residence state will generally allow as a deduction from its tax on the item of income an amount equal to the tax paid in the source state.

1.2. Typical cases dealt with in the mutual agreement procedure

A MAP article such as Article 25 of the UN Model Tax Convention typically sets out two broad areas in which the contracting states shall endeavour to resolve their differences by mutual agreement:

(1) Cases in which a taxpayer considers that the acts of one or both of the Contracting States result or will result for the taxpayer in taxation not in accordance with the provisions of the convention (covered by paragraphs 1 and 2 of Article 25); and

(2) Cases in which there are difficulties or doubts as to the interpretation or application of the convention (covered by paragraph 3 of Article 25).

A MAP article will also generally permit the contracting states to consult together for the elimination of double taxation in cases not provided for in the convention. The different types of cases that are dealt with in the MAP are briefly discussed below.

1.2.1. Article 25(1) cases – taxation not in accordance with the convention

Paragraph 1 of Article 25 of the UN Model Tax Convention permits a taxpayer who considers that the actions of one or both of the contracting states result or will result in taxation not in accordance with the provisions of the convention to present its case to the contracting state of which it is a resident. A taxpayer's presentation of such a case to the contracting state of which it is a resident is often referred to as a "request for MAP assistance" or a "request for competent authority assistance".

Most disputes that arise under tax conventions involve "taxation not in accordance with the provisions of the Convention". Article 25(1) is thus the most commonly referred to provision of the MAP article.

A contracting state's taxation of a person or transaction in a manner inconsistent with provisions of a convention will in most cases result in international double taxation – that is, either (i) the imposition of tax in both contracting states on the same taxpayer in respect of the same income ("juridical double taxation") or (ii) the imposition of tax in both contracting states on the same income in the hands of different taxpayers ("economic double taxation").

Common examples of Article 25(1) cases include the following:

- Transfer pricing cases. Historically, most Article 25(1) cases have involved transfer pricing issues and the economic double taxation that may result when a contracting state makes adjustments to income from related party non-arm's length transactions among and between the members of a multinational group of enterprises.

  The economic double taxation that may arise in a transfer pricing case can be illustrated by the following example. State A makes an adjustment with respect to a related party transaction between a resident of State A and a resident of State B. Following the adjustment, State A charges tax on the resulting additional income in the hands of the related party resident in State A. The income reported in State B by the other party to the transaction, however, reflected the original (pre-adjustment) price. As a result, State B will have already charged tax on that same income (the amount of the State A adjustment) in the hands of the State B resident.

In the factual scenario described in the preceding paragraph, the issue has sometimes arisen whether State B can provide relief to the State B resident where there is no provision in State B domestic law or in the Associated Enterprises article of the State A-State B tax convention to provide such relief (sometimes referred to as "correlative" or "corresponding" relief).

Paragraph 2 of Article 9 (Associated Enterprises) of the UN Model Tax Convention provides for such relief as follows:

> Where a Contracting State includes in the profits of an enterprise of that State – and taxes accordingly – profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the profits so included are profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State shall make an appropriate adjustment to the amount of the tax charged therein on those profits. …

Certain tax conventions based on the UN Model Tax Convention, however, may not contain a provision similar to Article 9(2).

In this circumstance, it should be noted that the Commentary on Article 25 of the UN Model Tax Convention makes clear that Article 25 provides machinery to enable competent authorities to consult with a view to resolving the economic double taxation that may arise in transfer pricing cases. The Commentary expressly states that "the corresponding adjustments to be made in pursuance of paragraph 2 of [Article 9] … fall within the scope of the mutual agreement procedure, both as concerns assessing whether they are well-founded and for determining their amount".[5]

The Commentary further states that even when a tax convention does not contain rules similar to those of Article 9(2), the mere fact that the contracting states have included Article 9(1) in a convention demonstrates the intent to have economic double taxation covered by the convention. "As a result, most Member countries consider that economic double taxation resulting from adjustments made to profits by reason of transfer pricing is not in accordance with – at least – the spirit of the Convention and falls within the scope of the mutual agreement procedure set up under Article 25."[6]

- Permanent establishment cases. Under Article 7 (Business Profits) of the UN Model Tax Convention, the business profits of an enterprise of a contracting state are taxable only in that state, unless the enterprise carries on a business in the other contracting state through a permanent establishment.

  Taxpayers frequently make requests for MAP assistance where they disagree with a contracting state's conclusion that their presence or activities in that state give rise to a permanent establishment – and thus that the income attributable to such presence or activities should be subject to tax in that state. Requests for MAP assistance are also often made in connection with the determination of the profits attributable to a permanent establishment.

  Permanent establishment cases may often involve juridical double taxation. For example, consider a State A enterprise that does business in State B. In State B's view, these activities give rise to a State B

[5] See paragraph 3 of the Commentary on Article 25 of the UN Model Tax Convention (quoting paragraph 9 of the Commentary on Article 25 of the OECD Model Tax Convention).

[6] See id. (quoting paragraph 10 of the Commentary on Article 25 of the OECD Model Tax Convention).

permanent establishment. State B thus taxes the State A enterprise on the profits it considers attributable to this State B permanent establishment. State A, on the other hand, does not consider the State A enterprise to have a State B permanent establishment and, accordingly, takes the view that only State A may tax the profits attributable to the State B business. As a result, the State A enterprise is subject to tax in both states on the profits of the State B business.

- Dual-residence cases. Article 4 (Residence) of the UN Model Tax Convention provides that an individual is a resident of a contracting state for purposes of the convention if he is liable to tax in that state by reason of domicile, residence, or any other similar criterion. Differences in the domestic law criteria used to determine the comprehensive liability to tax that will give rise to residence for convention purposes, however, may often cause an individual to be considered a resident under the tax laws of both contracting states.

  Paragraph 2 of Article 4 thus sets out a series of tiebreaker tests that examine an individual's facts and circumstances to determine the contracting state with which the individual has a greater connection, and, accordingly, a single residence country for purposes of the convention. Given the fact-intensive and subjective nature of the tiebreaker tests, requests for MAP assistance may often arise because an individual disagrees with how the tests have been applied by one (or both) of the contracting states.

  For example, Article 4(2)(a) provides that an individual with a permanent home in both contracting states will be deemed to be a resident only of the state with which his personal and economic relations are closer (centre of vital interests). The application of this test requires the examination of a great number of factors – family and social relations, occupations, political and cultural activities, place of business, etc. Different views on how these factors should be weighed may lead to different conclusions as to an individual's centre of vital interests, and thus his residence for purposes of the convention. Through the MAP, the contracting states may reach agreement on how the test should be applied to a taxpayer's facts.

  Paragraph 4(2)(d) further provides that where the contracting states are unable to determine the residence of an individual using the tiebreaker tests, the question shall be settled by mutual agreement.

- Withholding tax cases. Tax conventions often permit source state taxation of dividends, interest, and royalties beneficially owned by a resident of the other contracting state, but limit the tax charged by the source state to an agreed-upon percentage of the gross amount of such payments (see Articles 10 (Dividends), 11 (Interest), and 12 (Royalties) of the UN Model Tax Convention). The tax charged by the source state will typically take the form of a withholding tax.

  Where the source state levies a withholding tax on a payment to a resident of the other contracting state in excess of that allowed under the applicable convention, the taxpayer may make a request for MAP assistance to the competent authority of its state of residence to address the taxation not in accordance with the convention.

  For example, in a situation in which a company resident in State A pays a dividend to an individual resident in State B, the company withholds State A tax from the dividend at the tax rate provided by State A's domestic law. If the rate of the State A withholding tax is greater than the rate applicable under the dividends article of the tax convention between State A and State B, the individual may make a MAP request to the State B competent authority in connection with the excess State A withholding.

1.2.2. Article 25(3) cases – interpretation and application of the convention/double taxation in cases not provided for in the convention

The first sentence of paragraph 3 of Article 25 of the UN Model Tax Convention provides that the contracting states will endeavour to resolve by mutual agreement "difficulties or doubts" as to the interpretation or application of the convention. Pursuant to this provision, the contracting states undertake to discuss and resolve by mutual agreement any issues or questions related to the convention that require clarification or interpretation.

These issues and questions will often be of a general nature. For example, as discussed below, Article 25(3) may be used to agree on the definition of a specific term used in the convention, or on procedures to give effect to a specific convention provision. The resolution reached through the MAP will thus potentially concern a number of taxpayers, rather than solely a specific taxpayer or the parties to a specific transaction (as in an Article 25(1) case).

Article 3(2) of the UN Model Tax Convention provides that a term not specifically defined in the convention will generally have the meaning that it would have under the domestic law of the contracting state applying the convention with respect to its taxes. In some cases, however, a term used in the convention may not be defined under a contracting state's domestic law, or the use of a domestic law definition may not be appropriate in a specific context. In other cases, inconsistencies between the contracting states' domestic law definitions of a term may potentially create obstacles to the uniform application of a specific provision of the convention.

The first sentence of Article 25(3) directs the contracting states to use the MAP to agree to a common meaning of a term where necessary to provide clarity, to ensure that a provision achieves its intended purpose, and/or to ensure that the convention is consistently applied. The competent authorities may thus, for example, use the MAP to agree on a common definition, for purposes of the convention, of terms such as "place of management" (used in Article 5 (Permanent Establishment) of the UN Model Tax Convention) or "banking enterprise" (used in Article 7 (Business Profits)).

Some countries have found that the active pursuit of opportunities to use the authority provided by Article 25(3) is a means to improve the implementation of income tax conventions. In addition, where mutual agreements reached under Article 25(3) apply to all taxpayers or a general category of taxpayers, the publication of such agreements may serve to provide guidance and proactively resolve potential future disputes.

Contracting states may also rely on the first sentence of Article 25(3) to reach agreement on the procedures to be used to apply or otherwise give effect to the convention. Such agreements, could concern, for example, the certification of a taxpayer's status as a resident of a contracting state, or the procedures and criteria used to grant treaty benefits to fiscally transparent entities.

The second sentence of Article 25(3) provides that the contracting states may consult together to eliminate double taxation in cases that are not otherwise provided for in the convention. The most often cited example arises in the case of a third-country resident that has permanent establishments in both of the contracting states.

In such a context, the contracting states (State A and State B) may not agree on the amount of the profits attributable to each of the third-country resident's permanent establishments. Such a disagreement could occur, for example, where State A and State B have differing views on the contributions made by each permanent establishment to the third-country resident's global operations. As a result, there is the potential for juridical

double taxation because a portion of the income of the third-country resident may be subject to tax in both State A and State B.

The use of Article 25(3) to reach a MAP resolution in cases not otherwise covered by the convention may be considered to fulfil one of the fundamental purposes of the convention – the elimination of international double taxation. Countries may accordingly consider it appropriate to make active use of this Article 25(3) authority.

1.3. What is a competent authority?

The UN Model Tax Convention, like other tax conventions, uses the term "competent authority" to refer to the person or body within a contracting state with responsibility for resolving issues that arise in connection with the convention. Under the terms of Article 25, the competent authority of a contracting state:

(1) Accepts taxpayer requests for MAP assistance and endeavours (where it is unable itself to arrive at a satisfactory solution) to resolve these cases by mutual agreement with the competent authority of the other contracting state;

(2) Resolves difficulties or doubts as to the interpretation or application of the convention by mutual agreement with the competent authority of the other contracting state; and

(3) May consult with the competent authority of the other contracting state to eliminate double taxation in cases not covered by the convention.

Other articles of the UN Model Tax Convention also make reference to the competent authorities and specifically provide for competent authority assistance with respect to particular matters. See, for example, paragraph 2 of Article 9 (Associated Enterprises)[7] and sub-paragraph 2(d) of Article 4 (Resident).[8]

1.3.1. Purpose of a competent authority and the performance of its functions

In broad terms, the purpose of the competent authority is to ensure that a tax convention is properly applied and to endeavour in good faith to resolve any disputes that may arise as to its application or interpretation.

In performing its functions, the competent authority is to be guided first by the terms of the convention itself. The competent authority must then refer to any guidance promulgated under the convention. Such guidance may include, for example, an agreed-upon commentary or technical explanation to the convention, or an agreement of general application concluded by the competent authorities pursuant to the MAP. Model tax conventions (such as the UN Model Tax Convention) upon which the convention was based, and their commentaries, are an additional important point of reference.

Competent authorities should make every effort to resolve cases in a principled, fair, and objective manner, deciding each case on its own merits and not with reference to revenue statistics or an overall balance of results. Moreover, and especially in light of the principle of reciprocity underlying any international

[7] Under Article 9 of the UN Model Tax Convention, a contracting state may adjust the income of a resident enterprise where the enterprise takes part in a related party transaction that does not occur at arm's length. Article 9(2) provides that the competent authorities shall consult, if necessary, to determine the appropriate correlative adjustment to be made in the other contracting state.

[8] Article 4(2)(d) of the UN Model Tax Convention provides that the competent authorities shall determine the residence of an individual by mutual agreement where the Article 4 tiebreaker tests do not resolve the matter.

agreement, competent authorities should be consistent in their approach to an issue, regardless of the contracting state that is favoured by that approach in a particular case. Where competent authorities are otherwise unable to reach an agreement, however, they should seek appropriate opportunities for compromise to provide relief from double taxation.

1.3.2. Who is the competent authority?

Under sub-paragraph (1)(e) of Article 3 (General Definitions) of the UN Model Tax Convention, the definition of the term "competent authority" – that is, the designation of a governmental official, agency, or entity as a contracting state's competent authority – is left to each of the contracting states. In the typical case, the competent authority will be identified, for example, as "the Minister of Finance or his authorised representative" or "the Secretary of the Treasury or his delegate".

In practice, the full powers of the competent authority function, including the legal authority to conclude an agreement in the MAP, will usually be delegated within a national tax administration to the official or body with day-to-day responsibility for the administration of a contracting state's MAP program. How the competent authority designated in Article 3 delegates these powers will, of course, depend on the contracting state's domestic law and administrative practice.

Most often, this delegation occurs in the same manner used to delegate authority to carry out other tax administration functions. In practice, the delegation of authority may be made, for example, through an order or directive issued by the designated competent authority, or in regulations or other administrative procedures approved by the competent authority.

Article 3 allows more than one authority to be designated as competent for purposes of applying the convention. This approach reflects the circumstance that, in some contracting states, certain matters connected with the execution and/or implementation of a tax convention may not fall within the exclusive jurisdiction of the contracting state's tax authorities, or may be reserved to the competence of other authorities. For example, the Ministry of Foreign Affairs may be responsible for certain functions connected with treaties and other international agreements under the domestic law of a contracting state.

Even where a convention designates only one competent authority, certain other components of a contracting state's government may play an important role in the application and/or interpretation of the convention. In some contracting states, for example, domestic law may give other authorities (such as courts or the Ministry of Foreign Affairs) the right to interpret international treaties and agreements.

1.3.3. Structure of the competent authority function

As noted above, the competent authorities designated in a tax convention are often officials at the highest level of a contracting state's tax administration. For practical and administrative reasons, the power and authority to perform the competent authority function are then typically delegated to a subordinate official who carries out the day-to-day functions of the competent authority role.

Countries have recognised that the efficiency and effectiveness of a MAP program is enhanced if these key officials are actively and directly engaged in the MAP process – for example, where officials with decision-making authority with respect to MAP cases remain informed of the details of MAP cases and are closely involved in detailed bilateral MAP discussions.

Countries have also found that the functioning of a MAP program is enhanced if the official performing the competent authority function is known and readily accessible to taxpayers. To this end, contracting states may consider it useful to publicise the identity of the officials responsible for carrying out the competent authority function, as well as information on how to contact the competent authority. Many countries provide this information to taxpayers as part of their general public guidance on how to seek MAP assistance.

Once a contracting state has determined who will be responsible for the day-to-day activities of the competent authority, it must also determine how the competent authority's work will be structured. The approach chosen will, of course, depend upon the specific circumstances of a contracting state's tax administration, including the resources available and the present (or anticipated) MAP caseload.

A contracting state may potentially separate its competent authority function into a group responsible for taxpayer-specific cases (that is, cases of taxation not in accordance with the convention and cases of double taxation not described in the convention) and a group responsible for general or interpretive questions that do not involve a specific taxpayer. Based on the types of MAP cases in inventory, a contracting state may also choose to organize the work of the competent authority by country or region, taxpayer industry, or type of taxpayer (individual, corporate, etc.).

The effectiveness of a MAP program may also be improved if the competent authority function is given a certain degree of independence from the field personnel responsible for taxpayer audits and adjustments. Such independence may enhance the objectivity of the competent authority and thus its ability to apply the convention in a fair and impartial manner. An autonomous competent authority should, in addition, be best able to focus on its primary objective – relieving international double taxation.

Countries have similarly found it helpful where the measures used to evaluate the performance of the competent authority relate to factors such as the time taken to resolve a case, consistency, and principled and objective outcomes, not, for example, the number of sustained audit adjustments or amount of tax revenue. The use of these criteria reinforces the goals and objectivity of the competent authority function and thereby improves the overall effectiveness of the MAP program.

In structuring the competent authority function, countries have found that it is of fundamental importance to provide the competent authority with adequate resources. Human resources, in the form of skilled personnel, will often be the most crucial factor in operating an efficient and effective MAP program.

In order to deal with the broad range of issues encountered in the MAP, a competent authority staff will ideally include, or have access to, individuals with knowledge and expertise in the following areas:

- Law. Interpreting and applying a tax convention requires knowledge and expertise regarding the convention itself, other tax conventions, domestic and foreign tax law and regulations, and generally accepted international standards such as the UN Model Tax Convention.

- Economic and statistical analysis. Knowledge and understanding of the economics underlying a transaction, an industry, and/or a market may also be essential to the proper interpretation and application of a convention, especially in transfer pricing cases. In certain cases (for example, complex bilateral Advance Pricing Arrangements), skills in statistical analysis and techniques may also be necessary.

- Accounting standards. Knowledge of accounting standards and practices, in particular those used by large taxpayers, may often be required to understand certain aspects of a taxpayer's business, industry, or a specific transaction.

- Examination procedures. The records of a domestic examination may frequently be the competent authority's main source of information in a MAP case. Knowledge and understanding of the examination process, as well as domestic law reporting, documentation, and substantiation requirements, will enable the competent authority to make the most productive use of the information at its disposal.

Maintaining and developing the skills of the competent authority staff also require that a tax administration devote appropriate resources to their training.

In addition to skilled personnel, the competent authority should ideally be provided with adequate financial resources to meet its obligations under the convention. A competent authority must bear the expenses related to face-to-face meetings with other competent authorities (such as travel and accommodation expenses) and may also require funds to pay for the services of experts or consultants (for example, economists or industry specialists consulted in complex transfer pricing cases).

The translation of documents (for example, translations of contracts or foreign tax law) and interpretation services (for example, in the the context of a face-to-face meeting of competent authorities) may require additional resources.

Finally, depending on the scope and variety of its MAP caseload, a competent authority may require access to a broad range of information resources, including, for example, foreign tax law materials and databases of company and industry information.

1.4. The relationship between the MAP and domestic law (including domestic law recourse provisions)

The mutual agreement procedure provided for by Article 25 of the UN Model Tax Convention is available to taxpayers "irrespective of the remedies provided by the domestic law" of the contracting states. The MAP is thus a special procedure that exists in addition to domestic law remedies. For example, a taxpayer who has the right to request MAP assistance may also have the right to challenge the actions taken by a country's tax administration in a domestic court or appeals process.

Article 25 does not further address the relationship between domestic law remedies and the MAP. How domestic law remedies and the MAP interact is thus determined in each contracting state by that state's domestic law and administrative procedures.

At the threshold, it is important that a taxpayer planning to make a request for MAP assistance inform itself as to, and make appropriate use of, the procedures required to protect its rights to domestic recourse or appeal. Such procedures may include, but are not limited to:

- Filing a waiver of domestic time limits on assessment. Under the domestic laws of many states, the tax administration has a limited period of time within which it may assess tax with respect to a given taxable year (sometimes referred to as a statute of limitations on assessment). Taxpayers similarly have a limited period of time in which they may object to or otherwise challenge the actions of the tax administration in a domestic forum. In many of these states, however, the taxpayer and tax administration may agree to

extend the relevant periods. This procedure may involve, for example, filing a request or a specific form with the tax administration.

- Submitting a protective claim. In some states, taxpayers may protect their rights to certain domestic recourse procedures by filing a protective claim before any applicable deadlines. A timely claim may have the effect of keeping any applicable periods of limitations open until the claim is resolved or withdrawn. Protective claims may include, for example, a claim for refund submitted to the appropriate tax administration function.

- Lodging an appeal with the appropriate administrative or judicial body. In some states, taxpayers may protect their rights to certain domestic administrative or judicial procedures by lodging an appeal with the appropriate body before any applicable deadlines. As with a protective claim, a timely appeal may may have the effect of keeping any applicable periods of limitations open until the appeal is resolved or withdrawn. Examples of such an appeal may include an application to a tax administration's administrative appeals function or a petition or other challenge filed with a domestic court.

Because Article 25 does not compel the contracting states to reach agreement in the MAP, but only to use their best efforts to do so, there will on occasion be situations in which there is no MAP agreement between the contracting states. In such a situation, a taxpayer that has not taken appropriate measures to protect its rights under domestic law will have no further recourse.

A contracting state must also determine for itself the procedure to be followed when a taxpayer has invoked both the MAP and domestic law recourse procedures. As a general matter, most tax administrations will deal with a taxpayer's case in the MAP or in a domestic forum (usually a court), but not both at the same time. One process will be suspended or put on hold pending the outcome of the other.[9]

Where a taxpayer seeks to obtain relief through both the MAP and a domestic recourse procedure, a contracting state's MAP procedures should specify how the process that takes priority will be determined. In the typical case, the taxpayer is allowed to choose whether the MAP or the domestic procedure will proceed. In this regard, it is important that taxpayers have guidance as to the potential consequences of obtaining recourse through one process rather than the other. These consequences may typically be illustrated in a tax administration's general procedures or instructions for requesting MAP assistance, or in other appropriate public guidance.

In general, many tax administrations prefer that domestic law recourse procedures are suspended or put on hold in favour of seeking a bilateral resolution of the case through the MAP. A MAP agreement will generally provide a comprehensive bilateral resolution of the taxpayer's case. A domestic recourse procedure, in contrast, will not provide a resolution in both of the states involved, and may in many cases fail to relieve international double taxation.

In a case where the contracting states are able to reach agreement in the MAP and the taxpayer is satisfied with the MAP result, the taxpayer will generally have no further need for domestic recourse procedures. As described below, each of the contracting states will then take appropriate measures to implement the MAP resolution.

[9]Some contracting states may, however, provide simultaneous MAP and domestic recourse programs.

If, however, the terms and conditions of a MAP resolution are not satisfactory to the taxpayer, the taxpayer may be entitled (under a contracting state's domestic law or procedure) to reject the MAP resolution and pursue any and all available domestic remedies. As in the situation in which the contracting states are unable to reach agreement in the MAP, such domestic remedies will be available only if the taxpayer has taken appropriate measures to protect its rights to those remedies under the applicable domestic law.

As noted in paragraph 3 of the Commentary on Article 25 of the UN Model Tax Convention, the case may also arise where a taxpayer with a suit still pending in a domestic court requests to defer its decision whether to accept a MAP resolution until the court delivers its judgement.[10] Although the Commentary notes that there would be no grounds for rejecting such a taxpayer request, contracting states may be concerned about possible divergences or contradictions between the decision of the court and the MAP agreement. As a result, any implementation of a mutual agreement should be made to depend on the taxpayer's express acceptance of the terms of the mutual agreement as well as the taxpayer's withdrawal of any suit still pending in a domestic court regarding the matters settled through the MAP.[11]

Different issues may arise in the alternative scenario in which a taxpayer's case is resolved in a domestic court and the MAP has been suspended or put on hold (or the competent authorities have not otherwise reached a MAP resolution). Most significantly, the tax authorities of a contracting state may consider that they do not have the legal authority to deviate from the decision of a domestic court in the MAP. If this is the case, the decision rendered by the domestic court will bind the tax administration and prevent it from providing any relief through the MAP.

In such circumstances, the contracting state in which the decision was rendered may seek through the MAP to eliminate double taxation indirectly by obtaining a correlative adjustment in the other contracting state. For example, suppose that a State A court sustains a transfer pricing adjustment made by the State A tax administration that increases the income derived by a State A company from a non-arm's length transaction with a related company in State B. State A may seek through the MAP to have State B decrease the income of the State B company by the amount of the sustained adjustment and refund State B tax as appropriate.

The tax administration of the other contracting state will not, of course, be bound by the decision of a foreign court. Any relief provided by the other contracting state in these circumstances will necessarily depend primarily on the underlying merits of the taxpayer's case, not on the fact that domestic law constraints prevent the first contracting state from providing relief.

If a tax authority takes the position that it is legally bound to follow a domestic court decision in the MAP, or that it will not deviate from a domestic court decision as a matter of administrative policy or practice, it should inform taxpayers of this general policy so that they can make an informed choice between the MAP and alternative recourse procedures.

Audit settlements and unilateral Advance Pricing Arrangements may create similar issues for the MAP.

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[10] See paragraph 3 of the Commentary on Article 25 of the UN Model Tax Convention (quoting paragraph 31 of the Commentary on Article 25 of the OECD Model Tax Convention). Paragraph 3 of the Commentary on Article 25 of the UN Model Tax Convention sets out in full paragraphs 6 through 37 of the Commentary on Article 25 of the OECD Model Tax Convention, noting their relevance in light of the circumstance that paragraphs 1 and 2 of the UN Model Tax Convention reproduce the full text of paragraphs 1 and 2 of Article 25 of the OECD Model Tax Convention.

[11] A contracting state's implementation of an agreement reached through the MAP is discussed in section 2.4.8., below.

Audit settlements are a method used by many tax administrations to close audit files through an agreement with the taxpayer. Because they represent the result of a negotiation process, audit settlements will typically involve concessions by both the tax administration and the taxpayer.

In order to assure that an audit settlement represents a final resolution, one of the concessions sometimes sought by tax administrations is to include in its terms a limit on further recourse by the taxpayer, including recourse to the MAP. As a consequence, the tax administration that entered into the settlement may be precluded from resolving through the MAP any double taxation that may result from the settlement. In these circumstances, the domestic law of the other contracting state may also prevent its tax administration from providing any double tax relief to the taxpayer with respect to the tax paid to the first contracting state upon settlement of the audit.

Taxpayers and tax administrations should avoid the inclusion of a waiver of access to MAP in audit settlements, especially where the case involves an activity or transaction with potential tax consequences in more than one jurisdiction. In such circumstances, it is inappropriate to have two parties (the taxpayer and one tax administration) not include the other involved party (the other tax administration) in the final resolution of the case.

Advance Pricing Arrangements (APAs) are a tool used by tax administrations and taxpayers to agree, in advance, on the tax consequences of a transaction or transactions between the taxpayer and a related party in a different tax jurisdiction. A unilateral APA involves only one of the interested tax administrations and, accordingly, the tax consequences of the relevant transaction(s) in only one jurisdiction. A bilateral APA, in contrast, involves the tax administrations of both jurisdictions and is thus able to address the full scope of the transaction.

Unilateral APAs may prove useful in certain contexts (for example, in the absence of an applicable tax convention). The certainty they provide, however, is limited, especially if the tax administration of the other jurisdiction would be expected to examine closely the transaction, or type of transaction, at issue. In addition, taxpayers have sometimes found that previously concluded unilateral APAs have precluded them from accessing the MAP when they subsequently found themselves subject to double taxation.

Like an audit settlement reached in a potential MAP case, a unilateral APA represents a one-sided resolution of issues with tax consequences in two jurisdictions. In order to provide for a bilateral resolution of these issues, where a foreign adjustment is made with respect to a transaction or issue covered by a unilateral APA, it is helpful for the unilateral APA to be treated as the taxpayer's filing position and eligible for MAP, rather than as an irreversible settlement.

2. THE MUTUAL AGREEMENT PROCEDURE

2.1. What is a request for MAP assistance?

Under Article 25 of the UN Model Tax Convention, a taxpayer who considers that the actions of one or both of the contracting states result or will result in taxation not in accordance with the convention may request the assistance of the competent authority to relieve international double taxation and/or the other consequences of such taxation. Such a taxpayer request is referred to as a request for MAP assistance.

A request for MAP assistance is the primary means by which a taxpayer may make a competent authority aware that one or both of the contracting states is not (in the view of the taxpayer) correctly applying the convention. Requests for MAP assistance are thus at the origin of the large majority of MAP cases.

2.2. How does a taxpayer make a MAP request? Format and content

A request for MAP assistance generally must be made to the competent authority of a taxpayer's state of residence. See paragraph 1 of Article 25 of the UN Model Tax Convention.

In a context in which an adjustment made by one contracting state may potentially affect taxpayers in both contracting states, each of the affected taxpayers may want to make a separate request for MAP assistance to the competent authority of its state of residence. For example, where the State A tax administration makes a transfer pricing adjustment with respect to a related party transaction between a resident of State A and a resident of State B, the State A resident and the State B resident may both wish to request MAP assistance from their respective competent authorities.

A taxpayer may also make a MAP request to the contracting state of which it is a national in a case that falls under paragraph 1 of Article 24 (Non-Discrimination) of the UN Model Tax Convention. Under Article 24(1), nationals of a contracting state may not be subjected in the other contracting state to taxation or any tax-related requirement which is other or more burdensome than the taxation and tax-related requirements to which nationals of that other state in the same circumstances are or may be subjected. Thus, for example, where State A does not allow a deduction to an individual State B national resident in State A in the same manner as that deduction would be allowed to an individual State A national resident in State A, the State B national may typically request MAP assistance from the State B competent authority.

Article 25 of the UN Model Tax Convention does not itself set forth rules or other guidelines for the form in which a taxpayer must present a request for MAP assistance. As noted in the Commentary on Article 25 (quoting paragraph 13 of the Commentary on Article 25 of the OECD Model Tax Convention), each competent authority may prescribe whatever special procedures it feels are appropriate or necessary.

In the absence of a special procedure, the Commentary on Article 25 states that a taxpayer may present its MAP case to the relevant tax administration in the same manner that it would use to present other tax-related objections to that administration.

Countries have found that use of the MAP may be encouraged where the process of making a MAP request is transparent and free of unnecessary formalities. Competent authorities that take appropriate steps to develop guidelines and procedures for a taxpayer's presentation of a MAP case and to publicize this guidance may thereby ensure that taxpayers are able to make full and effective use of the MAP.

Competent authorities may require a great deal of information to consider and resolve appropriately certain of the more common (and fact-intensive) types of MAP cases (for example, transfer pricing, permanent establishment, and residence cases). In developing procedures for the presentation of a MAP request, a competent authority should consider how to balance its need for information with the complexity of the issues in a particular case and the burdens imposed on taxpayers to collect the required information.

In a context in which a competent authority has not developed a prescribed format for the presentation of a MAP request, a taxpayer should generally provide the following information (to the extent relevant to the request):

1. The name, address, and any taxpayer identification number of the taxpayer;

2. The name, address, and any taxpayer identification number of the related foreign taxpayer(s) involved (for transfer pricing cases);

3. The foreign tax administration involved and, if relevant, the regional or local tax administration office that has made, or is proposing to make, the adjustment(s);

4. The tax convention article that the taxpayer asserts is not being correctly applied, and the taxpayer's explanation of how it believes the article should be interpreted and/or applied;

5. The taxation years or periods involved;

6. A summary of the facts, including the structure, terms, and timing of all relevant transactions and the relationships between related parties (the taxpayer should advise the competent authority of how the facts may have changed during or after the relevant taxable period, and of any additional facts that come to light after the submission of the MAP request);

7. An analysis of the issues for which competent authority assistance is requested and the relevant legal authorities (including any authorities that may be contrary to the conclusions of the taxpayer's analysis). The analysis should address all specific issues raised by either tax administration as well as the amounts related to the adjustment(s) (in both currencies and supported by calculations, if applicable);

8. For transfer pricing cases, any documentation required to be prepared under the domestic legislation of the taxpayer's state of residence (where the volume of a taxpayer's transfer pricing documentation is large, a competent authority may determine that a description or summary of the relevant documentation is acceptable);

9. A copy of any other relevant MAP request and the associated documents filed, or to be filed, with the competent authority of the other contracting state, including copies of correspondence from the other tax administration, copies of briefs, objections, etc., submitted in response to the action or proposed action of the tax administration of the other contracting state (translations of relevant documents may be helpful, and, where documentation is voluminous, a competent authority may determine that a description or summary of such documentation may be acceptable);

10. A statement indicating whether the taxpayer or a predecessor has made a prior request to the competent authority of either contracting state with respect to the same or a related issue or issues;

11. A schedule of the relevant time limits and statutes of limitation in each jurisdiction (whether imposed by domestic law or the tax convention) with respect to the taxable periods for which MAP relief is sought (in cases of multiple taxpayers, a schedule for each taxpayer);

12. A statement indicating whether the taxpayer has filed a notice of objection, notice of appeal, refund claim, or any other comparable document in either of the relevant jurisdictions;

13. A statement indicating whether the taxpayer's request for MAP assistance involves issues that are currently or were previously considered by the tax authorities of either contracting state as part of an advance pricing arrangement, ruling, or similar proceedings;

14. If the taxpayer has not already provided consent for a person to act as its authorised representative, a signed statement that a representative is authorised to act for the taxpayer in all matters connected with the MAP request;

15. A copy of any settlement or agreement reached with the other jurisdiction that may affect the MAP process (with a translation, if applicable);

16. The taxpayer's view on any possible bases on which to resolve the issues;

17. Any other facts that the taxpayer may consider relevant;

The taxpayer should attest to the accuracy and completeness of the facts and information presented in a MAP request in a signed statement accompanying the request. A competent authority will typically not charge a fee for a MAP request, although there may be fees associated with certain competent authority functions or activities, such as Advance Pricing Arrangement programs.

To the extent feasible, tax administrations may consider it helpful to allow the electronic submission of documents in the context of the MAP. Electronic submission may facilitate the delivery of information to the two competent authorities as well as the connected burdens on taxpayers.

A competent authority's ability to understand, analyse, and respond to a taxpayer's MAP request will of course depend upon the quality of the information available. A taxpayer that provides accurate and complete information in a timely manner will facilitate the resolution of its case.

In addition, to the extent that a taxpayer provides information to both competent authorities in the MAP process[12], the taxpayer should assure that it provides the same information to the two competent authorities. Providing inconsistent or conflicting information may provoke delays if it is difficult for the two competent authorities to come to agreement on a common understanding of the underlying facts.

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[12] As discussed above, under Article 25(1) of the UN Model Tax Convention, a taxpayer will in most cases make a request for MAP assistance to the competent authority of its state of residence. That competent authority will generally then itself communicate the facts and information relevant to the MAP request to the competent authority of the other contracting state, under the authority of paragraph 1 of Article 26 (Exchange of Information). Depending on the specific procedures developed by the two competent authorities for the conduct of the MAP, taxpayers may in some circumstances submit additional information directly to both competent authorities, whether as a standard operating procedure or in response to a specific request from one or both of the competent authorities.

Some competent authorities may delay the acceptance or consideration of a MAP request where a taxpayer has failed to provide required information. In addition, in some contracting states the misrepresentation of facts or other material information may result in the denial of competent authority assistance, under a contracting state's domestic law, regulations, or other guidance.

Article 26 (Exchange of Information) of the UN Model Tax Convention authorizes the competent authorities of the contracting states to exchange such information as is necessary for carrying out the provisions of the convention. Article 26 thus expressly authorizes the exchange of taxpayer information between competent authorities to carry out the MAP provided for by Article 25.

Paragraph 1 of Article 26 provides that any information exchanged between the competent authorities is required to be treated as secret in the same manner as if such information were obtained under the domestic laws of the respective contracting states. Competent authorities should continually keep in mind their obligations under Article 26, which is intended in any case as a backstop with respect to the generally applicable confidentiality provisions of contracting states' domestic tax laws.

2.3. When can a taxpayer make a MAP request?

2.3.1. When can a taxpayer first make a MAP request?

Under paragraph 1 of Article 25 of the UN Model Tax Convention, the "trigger" permitting a taxpayer to make a MAP request is the notification to the taxpayer of the action by a contracting state that results (or will result) in taxation not in accordance with the provisions of the convention. In contrast, paragraph 3 of Article 25 does not provide a point at which a taxpayer may seek MAP assistance with respect to the interpretation or application of the convention.[13]

The term "action" in Article 25(1) is intended to be interpreted broadly. "Action" refers to any action or decision, whether of a legislative or regulatory nature, and whether taken with reference to the specific taxpayer or of general application, that has as a consequence the charging of tax to the taxpayer in a manner contrary to the convention.[14]

In general, a taxpayer may seek MAP assistance if it can establish that taxation not in accordance with the convention is probable.[15] The taxpayer must demonstrate that such taxation is likely to occur, regardless of whether an actual adjustment has already been made. The benefit of the doubt is given to the taxpayer.

In practice, a tax convention will generally not provide more specific guidance on the point at which the MAP may be invoked. The broad language of Article 25 of the UN Model Tax Convention appropriately provides each contracting state with a certain latitude to define this point, taking into account the specific characteristics of its domestic tax system and its judgement regarding how the MAP will best function.

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[13] Given the nature of MAP requests under Article 25(3), taxpayers may reasonably be expected to make such requests before or soon after the taxpayer has taken a filing position with respect to the transaction, activity, or situation affected by the relevant provision of the convention.

[14] See paragraph 3 of the Commentary on Article 25 of the UN Model Tax Convention (quoting paragraph 12 of the Commentary on Article 25 of the OECD Model Tax Convention).

[15] See id. (quoting paragraph 12 of the Commentary on Article 25 of the OECD Model Tax Convention). A probability of taxation not in accordance with the convention is not required to make a MAP request regarding the application or interpretation of the convention under Article 25(3).

The Commentary on Article 25 of the UN Model Tax Convention contains the following useful discussion on the issue of when the MAP may be invoked:

> 15. Probably, most competent authorities, at least in the early stages of their experience, would prefer that the process not be invoked at the point of a proposed adjustment and probably not even at the point of a concluded adjustment. A proposed adjustment may never result in final action and even a concluded adjustment may or may not trigger a claim for a correlative adjustment; even if it does, the latter adjustment may occur without problems. As a consequence, many competent authorities may decide that the process should not be invoked until the correlative adjustment (or other tax consequence in the second country) is involved at some point.
>
> 16. However, some competent authorities may prefer that the bilateral process be invoked earlier, perhaps at the proposed adjustment stage. Such involvement may make the process of consultation easier, in that the first country will not have an initial fixed position. In such a case, the other competent authority should be prepared to discuss the case at this early stage with the first competent authority. Other competent authorities may be willing to let the taxpayer decide, and thus stand ready to have the process invoked at any point starting with the proposed adjustment.

As the language of the Commentary makes clear, a competent authority's determination of the point from which the MAP may be invoked must take into account a number of different considerations, including the competent authority's level of experience, its current and anticipated MAP caseload, and the human and other resources available to the competent authority.

Many countries believe that MAP requests should be allowed at the early stages of a potential dispute, as soon as it appears likely that an issue will result in taxation contrary to the relevant convention. Relevant tax administration actions in the early stages of a dispute might include, for example, notification of a proposed adjustment or assessment, or the rejection of a taxpayer protest to a proposed adjustment or assessment. Early consideration of MAP cases may facilitate the identification of pragmatic solutions before the tax administration and the taxpayer have devoted significant resources to prepare the case.

Developing countries and countries in transition, especially those with more limited MAP experience and/or competent authority resources, may, however, prefer that MAP requests not be made until there is a more concrete possibility of taxation not in accordance with the convention. Depending on the characteristics of the particular tax system, a concrete possibility of taxation not in accordance with the convention might be considered to exist, for example, when a taxpayer receives a final notice of adjustment or assessment, or where an adjustment is sustained in an administrative (non-judicial) appeals procedure.

In any case, regardless of the point at which the competent authority determines it is appropriate for a taxpayer to invoke the MAP, a tax administration should provide guidance to taxpayers on this issue, preferably as part of more general public guidance on the MAP process.

2.3.2. Are there time limits to request access to the MAP?

Under Article 25(1) of the UN Model Tax Convention, a taxpayer must present its request for MAP assistance to the competent authority within three years from the notification of the action resulting in taxation not in accordance with the convention. Article 25(3) does not provide any time limit for a taxpayer to seek MAP

assistance with respect to the interpretation or application of the convention, but, as noted above, such requests may likely occur before or soon after the taxpayer has taken a filing position based on the relevant convention provision.

A taxpayer may thus be denied access to the MAP in an Article 25(1) case if the taxpayer does not meet the timeliness requirement. Although the specific time limit(s) for making a MAP request may vary from tax convention to tax convention, some general observations on the timeliness of MAP requests under conventions based on the UN Model Tax Convention are nonetheless appropriate.

The three-year time limit for presenting a MAP request is intended to establish a minimum time period within which taxpayers must present their MAP requests.[16] Contracting states may, of course, agree to longer periods, or to forgo time limits, in the interest of taxpayers.

Any time limit established by a convention should be coordinated with the time limit to present a MAP request, if any, established by a contracting state's domestic law, regulations, or other guidance. In addition, in line with the general policy of interpreting Article 25 of the UN Model Tax Convention in a taxpayer-favourable manner, the time limit most favouring the taxpayer (whether provided by the convention or by a contracting state's domestic law) should typically take precedence.

Determining whether a MAP request is timely requires a competent authority to decide what constitutes the first notification of the action resulting in taxation not in accordance with the convention. The term "notification" should typically be interpreted in the manner most favourable to the taxpayer.

In general, the time for presentation of a MAP request should begin to run only when the taxpayer is notified of the tax administration action that gives rise to the taxation at issue – that is, when the taxpayer receives a notice of assessment or adjustment, an official tax bill, or any other official demand for the collection or levy of tax.

If the relevant tax is levied by the deduction of a withholding tax at source, the time for presentation of a MAP request should generally begin to run upon the payment of the income. If, however, the taxpayer can demonstrate that it first became aware of the deduction at a later date, the time limit for the taxpayer's presentation of a MAP request should be determined with reference to that later date.

Finally, in the case where the taxation not in accordance with the convention is the result of a combination of actions or decisions taken in both contracting states, the time limit for presenting a request for MAP assistance should generally be determined with reference to the notification to the taxpayer of the last of the relevant actions or decisions taken by either contracting state.

2.4. How does the MAP work?

2.4.1. Basics: A typical MAP case

The first stage of a typical MAP case begins when a taxpayer contacts the competent authority of its state of residence to request assistance where the action of one or both of the contracting states results in taxation not in

[16] See paragraph 3 of the Commentary on Article 25 of the UN Model Tax Convention (quoting paragraph 17 of the Commentary on Article 25 of the OECD Model Tax Convention).

accordance with the applicable tax convention.[17] In a transfer pricing case, the taxpayer (or the related party in the other contracting state) is also encouraged to contact the competent authority of the other contracting state and to provide it with the relevant details of the MAP request.

The taxpayer's request must be prepared and presented in accordance with the instructions and other guidance provided for this purpose by the relevant competent authority. In the absence of any such guidance, the taxpayer should generally present its request to the competent authority of its state of residence in the same manner as it would present any other objection or protest to the tax administration.

The taxpayer's MAP request should in all cases describe in detail the relevant facts and circumstances, the procedural posture of the case, and the issue(s) in connection with which competent authority assistance is requested.

Following the submission of the MAP request, the residence state competent authority should confirm to the taxpayer that the request has been received and advise the other competent authority of the request.

The competent authority must also examine the request to assure that it is acceptable before any consideration of the substantive issue(s) raised by the taxpayer. This initial review will involve the following determinations:

- Was the MAP request submitted in accordance with applicable guidance?

  Although competent authorities should ideally seek to avoid undue formality in the MAP process (especially in the case of an unsophisticated taxpayer), a taxpayer should prepare and submit its MAP request according to the procedures established by a contracting state's domestic law, regulations, and/or any other applicable guidance. Such procedures may include, for example, guidelines for the format of a MAP request or the requirement of a signed taxpayer statement that the MAP request was prepared under penalties of law.

- Does the MAP request contain sufficient facts and other information to understand and evaluate the taxpayer's claim?

  The MAP request should, at a minimum, present a full description of the relevant facts and circumstances and the basis for the taxpayer's claim of taxation not in accordance with the convention. Although a competent authority may frequently ask a taxpayer to provide additional information, the MAP process is most efficient if a taxpayer submits a complete initial request. To this end, it is useful for competent authority guidance regarding the MAP to include a description of the information required to be submitted in a MAP request (for example, in the form of a checklist).[18]

[17] As noted in section 1.2.1., above, most disputes that arise under tax conventions are Article 25(1) cases.
[18] See section 2.2., above.

- Is the taxpayer's claim ripe?

  As discussed above, a competent authority should define (within the framework of Article 25 of the relevant tax convention) the specific point from which a taxpayer may invoke the MAP – that is, when a taxpayer's case is ripe for the MAP. A competent authority may determine that the taxpayer's MAP request is premature – and thus unacceptable – if, for example, international double taxation has not yet occurred or will arise only upon the occurrence of uncertain or remote future events.

- Is the taxpayer's claim timely?

  Article 25(1) of the UN Model Tax Convention requires that a taxpayer file a MAP request within three years of the notification to the taxpayer of the action that results in taxation not in accordance with the convention. The MAP request should accordingly set forth facts to demonstrate that the request was made within the applicable time limit(s), if any, provided by the convention and/or by a contracting state's domestic law and regulations.

The competent authority should promptly notify the taxpayer whether its MAP request will be accepted. In the event that the MAP request is not accepted, the competent authority should ideally inform the taxpayer of the reason(s) for the rejection.

In a scenario in which a rejected MAP request is not barred altogether (for example, by a time limit), the competent authority should indicate to the taxpayer how it might perfect its MAP request and/or invite the taxpayer to re-submit its MAP request at a later time (for example, when the taxpayer's claim is ripe).

The competent authority must then answer some additional questions to determine how it will approach the taxpayer's case:

- Has the taxpayer pursued domestic law remedies in addition to the MAP?

  As discussed above, how domestic law remedies and the MAP interact is generally determined in each contracting state by that state's domestic law and administrative procedures. The tax convention itself is typically silent on this point. A MAP request should accordingly indicate whether the taxpayer has pursued other administrative or judicial remedies, in either contracting state, in addition to the MAP.

  The competent authority uses this information to determine how the taxpayer's case will move forward from a procedural perspective. Thus, for example, where a contracting state does not allow the simultaneous consideration of a taxpayer's case in both the MAP and a domestic forum, the competent authority can determine whether one process should be suspended or put on hold pending the outcome of the other process.

- Has there been a decision, a settlement, or any other resolution with respect to the taxpayer's case in any domestic forum utilized by the taxpayer?

  The information recommended to be provided with a MAP request includes an indication whether domestic law remedies pursued by the taxpayer have resulted in a decision, a settlement, or any other resolution. As discussed above, a tax administration may consider that it does not have the legal authority to deviate from the decision of a domestic court in the MAP. Accordingly, depending on a

contracting state's domestic law and procedure, a court decision (or other similar resolution of a taxpayer's case in a domestic forum) may limit the scope of the relief a competent authority is able to provide in a particular case.

After answering these questions regarding the procedural posture of the taxpayer's case and the limits (if any) on the scope of possible MAP relief, the competent authority of the taxpayer's state of residence will proceed to consider the substantive issue(s) presented in the MAP request.

Where the competent authority determines that the taxpayer has a valid claim and that the taxation not in accordance with the convention is (in whole or in part) the result of the action of the state of residence, the competent authority may be able to provide relief unilaterally– that is, without involving the other competent authority. In this scenario, the competent authority should provide the appropriate relief with all possible speed.

Where the taxation not in accordance with the convention is the result of the action of the other contracting state (or the competent authority of the taxpayer's state of residence is otherwise unable itself to provide satisfactory relief), the second stage of the MAP process begins. The competent authority of the taxpayer's state of residence initiates contact with the other competent authority to endeavour to resolve the matter by mutual agreement.

This contact with the other competent authority should take place as soon as practically possible. It may typically occur using an opening letter or other similar document containing basic information about the MAP case. The other competent authority should confirm its receipt of the opening letter and, after a preliminary review, indicate whether it agrees to initiate MAP discussions.

Where the competent authority of the other contracting state agrees to discuss the case in the MAP, both competent authorities will proceed to an in-depth analysis of the merits of the case and the issues presented, in preparation for the bilateral discussion of the case.

The framework for this analysis and discussion is generally provided by a position paper prepared by one of the competent authorities. The position paper is typically prepared by the competent authority of the contracting state that took the action(s) that led to the taxation that is alleged to be contrary to the convention. In a more complex MAP case, the other competent authority may prepare and present a formal rebuttal to the initial position paper.

When the competent authorities are ready to discuss a MAP case, their discussions may take place using a great variety of methods – for example, by correspondence, by telephone or video conference, or in face-to-face meetings. Depending on the complexity of the issues involved, the competent authority negotiations may occur in a series of meetings or other consultations. The MAP discussions may also lead to requests for additional information or other clarification from the taxpayer.

As with other aspects of the MAP, Article 25 of the UN Model Tax Convention is silent with respect to how contracting states will conduct their MAP negotiations. Under Article 25(4), the contracting states are directed to develop appropriate bilateral procedures to implement the MAP. Such procedures include procedures for the notification and discussion of MAP cases.

The procedures developed for the conduct of the MAP should take into account, among other considerations, the experience of the respective competent authorities, their current and anticipated MAP caseload, and the

resources available to the competent authorities. The MAP process should avoid unnecessary formality and promote forthright discussion and a collaborative approach to issue resolution. Competent authorities should also inform taxpayers of the procedural details of the MAP[19], ideally as part of more general public guidance on the MAP.

Following a thorough discussion, the competent authorities will generally come to an agreement on a mutually acceptable resolution. Upon reaching an agreement, the competent authorities usually memorialise its details in an initialled summary record that describes the method of relief (for example, an adjustment to income or credit), the extent to which each contracting state will provide relief, the timing of relief, and any other important details (such as the treatment of amounts repatriated in connection with an adjustment to income).

The residence state competent authority then notifies the taxpayer that a MAP agreement has been reached and provides the taxpayer with an explanation of its details. Depending on the effect of invoking the MAP in the relevant contracting state[20], the taxpayer may have the option to accept or reject the MAP resolution. In the typical case in which the taxpayer accepts the MAP resolution, the summary record is generally followed by an exchange of letters that formalises the agreement between the competent authorities.

Following the formal exchange of letters, the competent authorities take steps as appropriate to implement the relief provided for in their agreement.

In a simple case in which the competent authority of one contracting state agrees to provide correlative relief with respect to an adjustment initiated by the other contracting state, such relief will generally be provided in the first contracting state through a corresponding adjustment – that is, an adjustment by the first contracting state that offsets, in whole or in part, the other contracting state's initial adjustment.

2.4.2. Are there other barriers to access to the MAP?

Certain barriers to access to the MAP have already been discussed above. A taxpayer's case may not be timely, either because it is not yet ripe, or because the MAP request was filed more than three years from the date the taxpayer was notified of the action resulting in taxation not in accordance with the convention.

The MAP may also be unavailable to a taxpayer under certain circumstances where a contracting state's domestic law or procedure does not permit the simultaneous consideration of the taxpayer's case in both the MAP and a domestic forum.

As noted above, other barriers to MAP may also arise in the transfer pricing context where there is no provision in a contracting state's domestic law providing for "correlative" or "corresponding" relief and the Associated Enterprises article of the relevant tax convention does not contain a provision analogous to paragraph 2 of Article 9 of the UN Model Tax Convention.

The Commentary on Article 25, however, makes clear that the inclusion of paragraph 1 of Article 9 in a convention demonstrates the contracting states' intent to have economic double taxation covered by the convention. That Commentary also notes that most countries consider the economic double taxation resulting from transfer pricing adjustments to fall within the scope of the MAP under Article 25 – that is, to be a matter appropriately addressed in the MAP.

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[19] See ¶ 31 of the Commentary on Article 25 of the UN Model Tax Convention.
[20] See the discussion in section 2.4.3., below.

Paragraph 3 of Article 9 is also relevant in discussing barriers to MAP. That paragraph provides:

> The provisions of paragraph 2 [of Article 9] shall not apply where judicial, administrative or other legal proceedings have resulted in a final ruling that by actions giving rise to an adjustment of profits under paragraph 1, one of the enterprises concerned is liable to penalty with respect to fraud, gross negligence or wilful default.

Under specific conditions, paragraph 2 of Article 9 obliges one contracting state (State A) to make a correlative adjustment with respect to a State A enterprise where the other contracting state (State B) has made a transfer pricing adjustment with respect to a related State B enterprise. Where paragraph 3 of Article 9 applies, however, State A no longer has an obligation to make such an adjustment with respect to the State A enterprise.

Paragraph 3 of Article 9 does not technically preclude access to MAP but merely removes the requirement that State A make an appropriate correlative adjustment. State A may determine in particular circumstances that it is appropriate to consider providing MAP relief even in a case where paragraph 3 applies. Consistent with the Commentary on Article 25 noted above, many countries would consider the provision of such relief to be within the scope of, and authorized generally by Article 25. Paragraph 3 of the Commentary on Article 9 states that Member countries may consider the double penalties that apply in Article 9(3) cases to be too harsh, a factor that could make them consider MAP access potentially appropriate. In any case, this paragraph of the Commentary on Article 9 also notes that these cases "are likely to be exceptional and there would be no application of [Article 9(3)] in a routine manner".

As discussed below, other barriers to access to the MAP may also be created where a tax administration takes the position that certain types of cases are ineligible for the MAP because of policy or other considerations.

In practice, some competent authorities have refused to provide relief where the adjustment underlying a taxpayer's MAP request is based upon an anti-avoidance provision in their countries' domestic laws (for example, a thin capitalisation provision). If such cases are accepted for MAP consideration, these competent authorities may do no more than forward the cases to the other competent authority, which may then provide correlative relief at its discretion.

This approach may likely not lead to a satisfactory resolution. Moreover, even where a tax convention specifically provides for the application of a contracting state's anti-avoidance provisions, contracting states should carefully examine whether their application in a particular case is in conflict with other provisions of the relevant tax convention.

Competent authorities may also decide not to accept a taxpayer's MAP request (or not to provide relief) for other policy reasons, or because a tax administration would like a judicial precedent with respect to a specific issue.

These barriers to the MAP may in many cases be inconsistent with a contracting state's obligation under Article 25 of the UN Model Tax Convention to endeavour to resolve through the MAP all "justified" taxpayer objections to taxation not in accordance with the convention. These barriers may also likely conflict with a contracting state's more general obligations under the international law of treaties.[21] They are certainly

[21] See Articles 26 ("Pacta sunt servanda") and 27 (Internal law and observance of treaties) of the Vienna Convention on the Law of Treaties (United Nations, *Treaty Series*, vol. 1155, p. 331). Article 26 of the

inconsistent with the general spirit and purpose of the MAP. Contracting states should accordingly not raise such barriers to access to the MAP without careful consideration.

2.4.3. What is the effect of invoking the MAP?

An aspect of the MAP that is closely linked to the relationship between the MAP and domestic law[22] – and with respect to which Article 25 of the UN Model Tax Convention is silent – is the legal effect of the taxpayer's invocation of the MAP.

In particular, contracting states must determine whether a taxpayer that invokes that MAP should be bound by the resolution reached by the competent authorities. If contracting states determine that the MAP should be a binding (and thus exclusive) relief procedure, a number of steps are involved.

Both contracting states must first evaluate whether a binding MAP is consistent with their domestic law. Depending on the circumstances, it may be necessary for a contracting state to change its domestic law to make a MAP agreement binding on a taxpayer.

The contracting states must also, of course, discuss their views on a binding MAP with each other. Such discussions should ideally occur during the negotiation of the tax convention itself, as it is of central importance that the contracting states share an understanding of how the MAP will function in the context of their agreement.

Competent authorities that agree to a binding MAP must then, as necessary, develop suitable domestic rules and procedures to make the MAP resolution exclusive and binding, under the authority granted by paragraph 4 of Article 25. These rules and procedures must, of course, take into account the specific characteristics of a contracting state's domestic law. They may include, for example, a requirement that the taxpayer formally give up its right to seek relief with respect to a particular matter in alternative domestic administrative and judicial procedures (such as a court or administrative appeals proceeding).

2.4.4. What is the taxpayer's role in the MAP?

Article 25 of the UN Model Tax Convention provides that a taxpayer may present a MAP request, but does not otherwise provide for taxpayer participation in the MAP. Contracting states may, however, provide for a taxpayer role in the MAP pursuant to the directive contained in paragraph 4 of Article 25 to develop, through competent authority consultations, "appropriate bilateral procedures, conditions, methods, and techniques" for the implementation of the MAP.

In practice, the taxpayer's role in the MAP is typically determined by domestic law (or other guidance) in the taxpayer's state of residence on how to seek MAP assistance.[23] Although domestic procedures for MAP

Vienna Convention provides that every treaty is binding on the parties thereto and must be performed by them in good faith. Article 27 of the Vienna Convention provides that a party to a treaty may not invoke the provisions of its internal law as justification for its failure to perform under a treaty.

[22] See section 1.4., above.

[23] A contracting state may generally prefer to apply the same procedures to all resident taxpayers seeking MAP assistance, regardless of the applicable tax convention, rather than to develop specific procedures for MAP access under each individual tax convention. This policy may facilitate the administration of a competent authority's MAP function and assure the uniform treatment of taxpayers (with respect to access to the MAP).

access will necessarily vary to a greater or lesser degree, the following general comments may be made with respect to the taxpayer's role in the MAP.

The taxpayer's primary role in the MAP is to provide the competent authority of its state of residence with complete and accurate information and documentation in a timely manner. The taxpayer should promptly advise its competent authority of any material changes in the facts and circumstances relevant to its case, as well as any new facts and information that emerge subsequent to the taxpayer's prior submissions. The taxpayer should similarly provide complete and timely responses to any competent authority requests for additional information.

The taxpayer should additionally make certain that the information provided to both competent authorities is consistent and free of conflicts. A taxpayer will generally not itself provide information connected with a MAP request directly to the competent authority of the other contracting state. Rather, the competent authority of the state of residence will typically provide such information to the competent authority of the other contracting state, under the authority of Article 26 (Exchange of Information) and as part of the bilateral procedures developed for the conduct of the MAP.

Circumstances may arise, however, where a taxpayer is involved in the preparation of information that is provided separately to both competent authorities. For example, where a MAP request regards a transaction with a related party in the other contracting state, and the related foreign party itself makes a MAP request to the other competent authority, the taxpayer may often be involved in the preparation of information or documents that are presented to the other competent authority.

Certain contracting states may permit taxpayers to present briefs or make presentations to both competent authorities as part of the MAP process. The material presented may in some cases also include taxpayer proposals for the resolution of a MAP case. Providing taxpayers with appropriate opportunities to present relevant information may help both competent authorities to reach a common understanding of the facts and issues, especially in particularly complex MAP cases, and thereby improve the functioning of the MAP.

In general, taxpayers have no further direct involvement in the consultation between the two competent authorities. Many contracting states regard MAP consultations as a confidential, government-to-government process in which taxpayer participation would be barred or otherwise inappropriate.

In addition, the MAP is a bilateral process in which both parties share common interests: the resolution of international double taxation and the correct interpretation and application of the tax convention. A taxpayer's main interest, in contrast, will generally be to minimize, over time, its worldwide tax liability. Direct taxpayer involvement in competent authority negotiations could thus reasonably be expected to extend or distort the MAP process.

Even though a taxpayer will usually not be directly involved in MAP discussions, the competent authority to which its MAP request was submitted should regularly communicate with the taxpayer regarding the status of its case and the relevant consultations. Such communications may encourage taxpayer cooperation with the MAP (for example, the prompt submission of additional information or documentation, when necessary) and should also improve the overall transparency of the MAP process.

2.4.5. How does the competent authority analyse and evaluate a MAP case?

A competent authority's evaluation of a MAP case will usually begin when the competent authority receives the taxpayer's MAP request and the supporting documentation. As discussed above, the competent authority must first make a threshold determination whether it will accept the case for MAP consideration. The competent authority then evaluates the procedural posture of the case and the scope of the relief potentially available to the taxpayer. Following these first steps, the competent authority proceeds to a substantive analysis of the facts and issues presented in the MAP request.

Where the competent authority is able to resolve the MAP case unilaterally, there is, of course, no need to involve the competent authority of the other contracting state.

Where, on the other hand, it is necessary to initiate bilateral consideration of the case in the MAP, the competent authorities of both contracting states must necessarily conduct their own substantive analyses. For this purpose, it is of fundamental importance that both competent authorities are working with the same set of facts.

The competent authority that initiates the MAP consultation process should provide the other competent authority with all of the relevant facts and information submitted by the taxpayer with the MAP request. Taxpayer involvement (for example, in the form of a presentation to both competent authorities) may also assist the competent authorities in arriving at a common understanding of the facts. Once the competent authorities agree on the facts of a MAP case, their analysis will turn to the proper interpretation of the tax convention and its application to the taxpayer's facts.

The end result of each competent authority's analysis is a reasoned and principled position on how the MAP case should be resolved. Each competent authority should be prepared to articulate in a clear manner the domestic law basis for any relevant tax administration action taken with respect to the taxpayer and, more importantly, how such action is consistent with the terms of the tax convention.

The key point of reference for purposes of the competent authorities' analysis is the body of law that the two contracting states have in common: the tax convention itself; any agreed-upon commentary or joint technical explanation of the convention; and any relevant model tax conventions (such as the UN Model Tax Convention), together with their commentaries.

Although the specific manner in which each competent authority presents its respective position will be determined by the bilateral procedures developed by the contracting states for the implementation of the MAP, at least one of the competent authorities will typically prepare a position paper setting forth its analysis and conclusions.

2.4.6. How do the competent authorities interact in a MAP case?

How the competent authorities interact in a MAP case is for the most part determined by the specific bilateral procedures they develop to carry out their MAP function. Article 25 of the UN Model Tax Convention does not provide guidance on how MAP consultations should be conducted, and, as noted above, paragraph 4 of Article 25 directs the competent authorities of the contracting states jointly to develop appropriate bilateral procedures to implement the MAP.

Article 25 provides considerable latitude to the contracting states to create a procedural framework for the MAP that takes into account their specific circumstances and preferences. The Commentary on Article 25 of the UN Model Tax Convention contains the following useful discussion in this regard:

> 25. The competent authorities will have to decide how their consultation should proceed once the procedure comes into operation. Presumably, the nature of the consultation will depend on the number and character of the cases involved. The competent authorities should keep the consultation procedure flexible and leave every method of communication open, so that the method appropriate to the matter at hand can be used.
>
> 26. Various alternatives are available, such as informal consultation by communication or in person; meetings between technical personnel or auditors of each country, whose conclusions are to be accepted or ratified by the competent authorities; appointment of a joint commission for a complicated case or series of cases; formal meetings of the competent authorities in person etc. It does not seem desirable to place a time limit on when the competent authorities must conclude a matter, since the complexities of particular cases may differ. Nevertheless, competent authorities should develop working habits that are conducive to prompt disposition of cases and should endeavour not to allow undue delay.

As noted in paragraph 31 of the Commentary on Article 25 of the UN Model Tax Convention, the competent authorities should make public, in as complete a manner as possible, the procedures they have adopted for the conduct of their consultation procedure.

The framework for the MAP consultation in a specific case is typically provided by a position paper prepared by one of the contracting states. A position paper is a document that sets out a detailed description of the relevant facts and issues, frames the questions to be resolved, and presents reasoned proposals for their resolution.

The position paper will generally be prepared by the competent authority of the contracting state that took the action(s) that led to the taxation that the taxpayer alleges to be contrary to the convention, regardless of the competent authority to which the taxpayer made its MAP request. The preparation and transmission of position papers is generally regarded as a matter of priority because of their important role in facilitating meaningful MAP discussions – and thus the timely resolution of a MAP case.

A position paper should generally contain the following relevant information:

1. The name, address, and taxpayer identification number (if any) of the taxpayer making the MAP request and of related persons in the other contracting state (if relevant), and the basis for determining the association;

2. Contact information for the competent authority official in charge of the MAP case;

3. A summary of the issue(s) presented, the relevant facts, and the basis for the tax administration action that is the subject of the MAP request;

4. The taxation years or periods involved;

5. The amount of income and the relevant tax for each taxable year, if applicable;

6. A complete description of the issue(s) presented, the relevant tax administration actions and adjustments, and the relevant domestic laws and treaty articles;

7. To the extent relevant and appropriate, calculations and supporting data (which may include financial and economic data and reports relied upon by the tax administration, as well as relevant taxpayer documents and records); and

8. For transfer pricing cases[24],

   (i) An outline of comparable transactions and methods of adjusting for differences;

   (ii) A description of the methodology used to make the adjustment(s); and

   (iii) An explanation of the choice of the methodology used to make the adjustment(s), including why the tax administration believes the methodology chosen is best-suited to achieve an arm's length result; identification of the tested party, if applicable; and an industry and functional analysis (to the extent that the relevant studies are not included in taxpayer documentation required to be prepared under the domestic legislation of the taxpayer's state of residence).

Following its review of the position paper, the other competent authority may request additional information and/or clarification with respect to the information presented.

In addition, depending on the complexity of the issue(s), the other competent authority may itself prepare a rebuttal or response paper. The written exchange of positions may help to focus the competent authorities on the precise area(s) of disagreement and thereby make their MAP consultations more productive.

Where the other competent authority prepares a rebuttal or response paper, the paper may be most useful if it contains the following information:

1. An indication whether a view, resolution, or proposed relief presented in the initial position paper can be accepted;

2. An indication of the areas or issues where the competent authorities are in agreement or disagreement;

3. Requests for any required additional information or clarification;

[24] Where the volume of a taxpayer's transfer pricing documentation is large, a competent authority may determine that a description or summary of the relevant documentation is acceptable.

4. Other or additional information considered relevant to the case but not presented in the initial position paper; and

5. Alternative reasoned proposals for resolution.

In practice, competent authorities may conduct their discussions and consultations using many different means, including letters, facsimiles, electronic mail, telephone and video conferences, and face-to-face meetings.

Face-to-face meetings may in many circumstances be the most effective manner to reach a resolution in a MAP case because they oblige each competent authority to develop and present a reasoned position by a set deadline. They may also foster a more candid and collegial discussion. The effectiveness of face-to-face meetings is further enhanced when such meetings involve competent authority officials who are themselves authorized to resolve MAP cases.

Of course, contracting states must determine how best to conduct their MAP consultations in the context of their bilateral relationship, taking into account factors such as the specific characteristics and experience of each competent authority, available resources, and the expected MAP caseload. Regardless of the means of consultation chosen, competent authorities should be encouraged to maintain open lines of communication throughout the MAP process, with a view to clarifying issues and facts and thereby moving MAP cases to resolution with all possible speed.

In some circumstances, the competent authorities may wish to memorialize the bilateral procedures they develop for the conduct of the MAP in the form of a memorandum of understanding (MOU) or other published guidance. This guidance may be broadly applicable (for example, establishing general objectives or timelines for all MAP cases) or concern a specific sub-set of MAP cases (for example, clarifying documentation requirements for transfer pricing cases).

MOUs promote a consistent approach to MAP cases and advance the MAP process, especially where they free the competent authorities to focus on substantive (rather than procedural) issues or provide guidelines for further process improvements. In addition, the publication of MOUs or other similar guidance enhances transparency and improves taxpayer understanding of the MAP process.

2.4.7. What happens when the competent authorities reach an agreement?

As noted above, when the competent authorities reach agreement in a MAP case, they will typically memorialise its details in a written summary describing the method of relief, the extent to which each contracting state will provide relief, the timing of relief, and any other details.

The relevant competent authority – that is, the competent authority to which the taxpayer presented its MAP request – then notifies the taxpayer that a MAP agreement has been reached and explains the details of the MAP resolution.

A competent authority must determine for itself the manner in which it informs a taxpayer that a MAP agreement has been reached, as well as the level of detail provided in its explanation of the proposed resolution.[25] The summary of the MAP agreement provided to the taxpayer may typically take the form of a

[25] Such procedures would be developed under the authority of paragraph 4 of Article 25, which permits a competent authority to "devise appropriate unilateral procedures, conditions, methods, and techniques to facilitate the above-mentioned bilateral

closing letter and/or an oral presentation in the context of a closing meeting. Regardless of the method chosen, the competent authority should ideally explain to the taxpayer the rationale for the MAP resolution.

Once presented with the terms of the agreement reached in the MAP, the taxpayer may have the option to accept or reject the MAP resolution.[26]

Although taxpayers may often be permitted to reject a MAP agreement, they are generally not permitted to accept the MAP agreement only in part – that is, only with respect to certain issues or certain taxable periods – unless both competent authorities agree to such a partial acceptance. Particularly in more complex cases, it may be unacceptable to the competent authorities to separate a MAP resolution into its component parts, given that the resolution, as a whole, represents a series of compromises and concessions by both competent authorities based on the totality of the facts and circumstances.

Where the taxpayer accepts the MAP resolution, such acceptance must typically be communicated to the competent authority in writing. The relevant competent authority may also ask the taxpayer to withdraw formally any domestic objections that were suspended or put on hold pending the outcome of the MAP process and/or to agree not to pursue any other forms of relief with respect to the same issue(s) and taxable period(s).

The competent authorities' initial summary record is then generally followed by an exchange of letters formalising the MAP agreement. Depending on the specific procedure developed between the two competent authorities, this exchange of letters may occur before, or following, the taxpayer's acceptance of the terms of the MAP resolution.

In all cases, the exchange of letters should ideally occur shortly following the conclusion of the MAP discussions. This will assure that the letters accurately reflect the competent authorities' agreement. Then, as discussed below, the competent authorities will arrange as appropriate to give effect to the MAP agreement in their respective jurisdictions.

Where the taxpayer rejects the MAP resolution, the competent authorities may consider the case closed. At this point of the MAP, the competent authorities may also determine that it is appropriate to consider any alternative proposal(s) for resolution presented by the taxpayer before the MAP case is definitively closed.

The competent authority to which the MAP request was submitted should formally advise a taxpayer that has rejected a MAP resolution when its MAP case has been closed. To the extent that the taxpayer has taken steps to protect its rights to seek relief in a domestic court or administrative appeals process, the taxpayer may then proceed to avail itself of those procedures. There is, of course, no guarantee that any domestic law recourse procedure will relieve international double taxation or otherwise resolve the issue(s) that prompted the MAP request in a taxpayer-favourable manner.

In some circumstances, a competent authority agreement in an important area may reasonably be considered to provide a more general indication of the contracting states' views on a particular issue. Paragraph 32 of the Commentary on Article 25 of the UN Model Tax Convention advises that competent authorities should develop appropriate procedures to publish such determinations.

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actions and the implementation of the mutual agreement procedure".

[26] See the discussion of the effect of invoking the MAP in section 2.4.3., above.

The MAP is most likely to produce an agreement that is susceptible to providing public guidance when the matter resolved is a general question of interpretation or application (that is, a case described in the first sentence of Article 25(3)). Such a MAP agreement might concern, for example, the definition of a term used in the convention, or a process used to apply the convention (for example, a certification process used to determine whether a person is a resident of a contracting state or otherwise entitled to the benefits of the convention).

In the majority of MAP cases, however, the agreement reached by the competent authorities is based on a taxpayer's specific facts and circumstances and is generally not intended to establish a precedent, whether with respect to other taxpayers or even with respect to the same taxpayer in different taxable years. In practice, the letters exchanged by the competent authorities to formalise a MAP agreement may often contain an express statement that the agreement has no precedential value.

2.4.8. How is relief implemented?

Following the competent authorities' exchange of letters and the taxpayer's acceptance of the MAP agreement, each competent authority must take the appropriate steps to implement the relief provided for in the MAP agreement, pursuant to the authority granted by Article 25 and any applicable provisions of a contracting state's domestic law. The implementation of the MAP agreement should take place with all possible speed.

The specific steps taken to implement a MAP agreement will, of course, depend upon the nature of the relief to be provided to the taxpayer.

In certain MAP cases, implementation of relief may require no more than a refund of tax by one of the contracting states.

For example, a MAP case may concern the proper rate of withholding tax on a dividend, interest, or royalty payment made by a resident of State A to a resident of State B. The competent authorities may agree in the MAP that State A should not have levied withholding tax at the rate provided by State A domestic law, but rather at the lower rate provided in the applicable article of the State A-State B tax convention. Relief would be provided to the State B resident through a refund by State A of the tax withheld in excess of the rate provided in the convention.

A second example is provided by a permanent establishment case. The competent authorities may agree in the MAP that a State A enterprise did not have a permanent establishment in State B and, accordingly, that the State A enterprise should not have been subject to State B tax with respect to certain business income, under the business profits article of the State A-State B tax convention. Relief would be provided to the State A enterprise through a refund of the State B tax on the relevant business income.

In other MAP cases, the competent authority of one contracting state agrees to provide correlative relief with respect to an adjustment initiated by the other contracting state. Such relief will generally be provided in the first contracting state through a corresponding adjustment – that is, an adjustment by the first contracting state that offsets, in whole or in part, the other contracting state's initial adjustment.

For example, assume a State A transfer pricing adjustment that increases the income derived by a State A company from a non-arm's length transaction with a related company in State B. If the State B competent authority agrees through the MAP to provide correlative relief with respect to the State A adjustment, it will typically provide such relief though a corresponding adjustment that decreases the income of the State B

company, for the relevant taxable period, in the amount of the State A adjustment. In this context, the State B corresponding adjustment may result in a refund of State B tax.

Paragraph 33 of the Commentary to Article 25 of the UN Model Tax Convention provides additional examples of the procedures required to implement different types of MAP relief in connection with a transfer pricing adjustment. If we again assume a State A transfer pricing adjustment that increases the income derived by a State A company from a non-arm's length transaction with a related company in State B, these examples may be illustrated as follows:

(i) State A may consider deferring the tax payment due as a result of its adjustment or even waiving the payment if, for example, payment or reimbursement of an expense charge by the State B company is prohibited at the time because of currency or other restrictions imposed by State B.

(ii) State A may consider steps to facilitate carrying out the adjustment and payment of a reallocated amount. For example, the State B company may be allowed, for State A tax purposes, to establish on its books an account payable in favour of the State A company in the amount of the State A adjustment, and the State A company will not be subject to a second State A tax on the establishment or payment of the amount receivable. The payment of the account receivable by the State B company should also not be considered a dividend by State B.

(iii) State B may also consider steps to facilitate carrying out the adjustment and payment of a reallocated amount. This may, for example, involve recognition of the payment made as a deductible item for State B tax purposes. Such steps are generally a part of the State B correlative adjustment.

From a practical standpoint, the implementation of MAP relief will generally require the competent authority to direct the appropriate component of the tax administration to take one or more specific actions with respect to the taxpayer, such the payment of a refund or the adjustment of the amount of tax due from the taxpayer or a related party. How this will occur will depend upon the specific unilateral procedures developed by the competent authority for this purpose, as well as the division of responsibilities and functions within the tax administration.

Paragraph 2 of Article 25 of the UN Model Tax Convention provides that any agreement reached through the MAP shall be implemented notwithstanding any time limits in the domestic law of the contracting states, such as time limits relating to adjustments of assessments and tax refunds.

In practice, however, the domestic laws of certain contracting states may limit the ability of the competent authority to implement MAP relief in disregard of domestic law time limits. As a result, some tax conventions do not contain a provision similar to the second sentence of Article 25(2).

Some tax conventions may, for example, provide that MAP relief will only be implemented to the extent consistent with domestic law time limits. Certain other tax conventions provide that a contracting state will be obliged to implement a MAP agreement after a domestic law time limit has passed only if the contracting state has been notified of the MAP case within a specified time period (for example, within a specific number of years from the end of the relevant taxable period).

In light of these potential differences from the UN Model Tax Convention, taxpayers should pay close attention to the relevant language of the applicable tax convention and timely take all protective measures required to preserve the possibility of MAP relief in both contracting states.

Because treaty-based or domestic law time limits may limit the effectiveness of the MAP, it is also helpful for a competent authority to remind the taxpayer when its MAP request is accepted of any time limits for the implementation of MAP relief that are applicable in the taxpayer's specific case. In any case, the overly strict interpretation of such time limits is seen by many countries as contrary to the spirit of the MAP.

2.4.9. What is the recommended timeline for the MAP?

The time required to complete a MAP case will depend on a number of factors, including the complexity of the case, the resources available to the competent authorities, and their overall caseloads. In general, however, most competent authorities will endeavour to complete a MAP case within two years of the date of its acceptance. The following table illustrates an ideal timeline for a typical Article 25(1) MAP case:

Action			
Taxpayer	**State A Competent Authority (Taxpayer's State of Residence)**	**State B Competent Authority**	**Target Time Frame or Deadline**
	STAGE ONE		
• Submit MAP request to State A Competent Authority (CA). • If a transfer pricing case, Taxpayer (or the associated enterprise in State B) is encouraged to contact State B CA and to provide it with the relevant details of the MAP request.			Under Article 25(1) of the UN Model Tax Convention: "within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Convention"
	• Confirm receipt of MAP request. • Advise State B CA of MAP request. • Preliminary review of MAP request. • Where necessary, request additional information from Taxpayer.		Within one month of Taxpayer's submission of the MAP request to State A CA.
	• Determine whether MAP request will be accepted. • Notify Taxpayer whether MAP request will be accepted. • If case accepted, determine whether unilateral relief is possible and appropriate.		Within one month of Taxpayer's submission of all information required by State A CA to determine whether the MAP request will be accepted.
	STAGE TWO		
	• If no unilateral relief possible, propose to State B CA to initiate MAP discussions – issue opening letter to State B CA.		Within one month of Taxpayer's submission of all information required by State A CA to determine whether the MAP request will be accepted.

Action			
Taxpayer	**State A Competent Authority (Taxpayer's State of Residence)**	**State B Competent Authority**	**Target Time Frame or Deadline**
		• Confirm receipt of State A CA request to initiate MAP discussions. • Preliminary review of MAP request. • Where necessary, request that State A CA obtain additional information from Taxpayer. • Notify State A CA whether request to initiate MAP discussions is accepted.	Within one month of State B CA's receipt of State A CA's opening letter.
	If State B CA agrees to MAP discussions, the CA of the Contracting State that initiated the adjustment (whether State A CA or State B CA) analyses and evaluates the MAP case and prepares a position paper for the other CA.		Within four to six months of State B CA's agreement to enter into MAP discussions.
	• Review of MAP case by the other CA. • Where necessary, the other CA may request that the CA of the Contracting State that initiated the adjustment provide additional information or explanation. • Determination by the other CA whether unilateral relief is possible and appropriate. • Where appropriate, preparation of rebuttal paper or other response to the position paper by the other CA.		Within six months of the other CA's receipt of the position paper prepared by the CA of the Contracting State that initiated the adjustment.
	Negotiation between State A CA and State B CA.[27]		Six months.
	STAGE THREE		
	• MAP agreement between State A CA and State B CA. • Memorialise MAP agreement in summary record.		Within 24 months of the acceptance date of Taxpayer's MAP request.
	• Notify Taxpayer that MAP agreement has been reached and explain its terms. • Where relevant, request that Taxpayer indicate whether it accepts MAP agreement.		
Notify State A CA whether it accepts the MAP agreement.			Within one month of notification of the MAP agreement.
	If Taxpayer accepts the MAP agreement, State A CA and State B CA confirm and formalise MAP agreement through exchange of letters.		As soon as possible after Taxpayer's acceptance of the MAP agreement.
	Implementation of the MAP agreement.		No later than three months after the exchange of letters formalising the MAP agreement.

[27] Face-to-face meetings are typically organized at this stage of the MAP but may occur at any other stage when necessary or appropriate.

Throughout the consideration of a MAP case, the competent authority that received the MAP request may consider it a useful practice to provide periodic, informal status updates to the taxpayer.

It may also be valuable for the competent authorities to advise each other on a regular basis (for example, every three months) of their progress on a MAP case. Such updates should keep both competent authorities focused on the details of the case and its overall progress, and should thereby facilitate its timely resolution.

Requests for additional information or clarification (whether competent authority-to-taxpayer or competent authority-to-competent authority) should not, however, be deferred until these periodic MAP case status updates. Such requests should be made as soon as practically possible, given that delays in receiving additional information or clarification may delay the substantive consideration (and thus the resolution) of a MAP case.

As discussed above, the framework for analysis and discussion in a MAP case is generally provided by a position paper. In most contexts, it is considered realistic and appropriate for the position paper to be prepared by the responsible competent authority within four to six months of the latter of (i) receipt of a complete submission of all relevant information, or (ii) notification by the other competent authority that it agrees to discuss the case in the MAP.

It is similarly reasonable to expect the other competent authority to complete its evaluation and response (if any) to the position paper within six months of its receipt of the position paper.

If it is not possible for a competent authority to respect this timetable for the preparation or review of the position paper, the relevant competent authority should timely advise its counterpart of the reasons for the delay and provide a projected timeframe for completion. Of course, the competent authorities should endeavour promptly to raise, and respond to, supplementary questions that arise during the review of the position paper, in order to clarify any issues before their formal MAP negotiations.

More generally, the competent authorities should endeavour to exchange all relevant information well in advance of their meetings. Where both competent authorities have adequate time prior to a meeting to review the materials and to consider fully the case and issues, the competent authorities can make the most effective use of their meeting time and the MAP consultations will be more productive.

Certain MAP cases will not be resolved within two years of the date of their acceptance (or any other similar deadline determined or recommended by the contracting states). Delays may arise where a taxpayer does not timely provide necessary information or where a MAP case is particularly complex.

In circumstances in which a MAP case is not resolved by a generally applicable deadline, the competent authorities may agree to continue their discussions, to extend the time frame for discussion and resolution, or take other appropriate action, which may include invoking alternative dispute resolution procedures such as arbitration or mediation.

It may also be advisable for senior competent authority officials to review such MAP cases to determine the causes of the delay and to agree on any necessary steps to move these cases forward to resolution. Such review may also permit the competent authorities to identify more general issues with the handling of MAP cases and areas where broader improvements may be made to their MAP programs.

2.4.10. What is the relationship between the MAP and domestic law penalties, interest, and collections?

Contracting states may have different views on whether a tax convention applies with respect to interest and penalties on a tax adjustment that is the object of a MAP request. Contracting states may similarly take different positions with respect to whether their domestic collection procedures should apply to tax adjustments that are the object of MAP discussions.

As with many other areas of the MAP, Article 25 of the UN Model Tax Convention is silent on these issues. Contracting states must accordingly reach their own conclusions regarding the interaction of the MAP and the relevant domestic law provisions. The contracting states should also ideally discuss these issues in the context of their tax convention negotiations and/or during their development of bilateral procedures for the conduct of the MAP.

In certain circumstances, a contracting state may take the position that interest and penalties are outside the scope of a tax convention because they are not expressly referred to in the convention. In such a case, the contracting state may conclude that its competent authority cannot or should not waive or otherwise consider interest and penalties as part of the MAP.

A contracting state's views on the relationship between the MAP and domestic law penalty provisions may also depend on the nature of a specific penalty. Certain penalties – for example, a penalty for failure properly to maintain transfer pricing documentation – may concern domestic law compliance issues that are outside the scope of the MAP and the tax convention. The competent authority may as a result be unable or unwilling to discuss them in the MAP.

In contrast, other penalties (such as certain transfer pricing penalties) may be linked to the amount of an adjustment that is itself the object of a MAP request. In a case in which a contracting state that has applied such a penalty agrees in the MAP to reduce the amount of the underlying adjustment, that state should appropriately reduce the amount of the penalty, regardless of its view as to whether the convention covers penalties.

Some contracting states may also be willing to provide relief from penalties through the MAP even where the adjustment that gave rise to the MAP is fully or partially sustained in the MAP. A contracting state may feel that such relief is appropriate, for example, if it appears after MAP review that the application of the penalty is no longer justified.

Differences between domestic law provisions on the accrual of interest on tax liabilities and refunds may create other issues for the MAP. Even if the MAP eliminates the international double tax that was the object of the MAP request, the taxpayer may still suffer a significant and equivalent economic burden if there are asymmetries with respect to how interest accrues on tax liabilities and refunds in the two contracting states.

For example, a MAP agreement may often result in an additional tax liability in one contracting state and a corresponding refund of tax in the other contracting state. In a scenario in which the first contracting state charges interest on the tax deficiency (or collects tax prior to the MAP resolution) and the second contracting state does not pay interest on the amount refunded to the taxpayer, this may result in a substantial economic burden on the taxpayer.

In light of this burden, it is desirable for contracting states to adopt flexible approaches to provide for relief of interest in the MAP, where they consider that their competent authorities are permitted to do so and where such

relief is appropriate. Some contracting states may feel that relief from interest is especially appropriate for the period in which the taxpayer is in the MAP process, given that the amount of time it takes to resolve a case through the MAP is, for the most part, outside the taxpayer's control. In many cases, however, changes to the domestic law of a contracting state may be required to permit the competent authority to provide interest relief.

Contracting states should also consider how their collection procedures will apply with respect to a tax adjustment that is the object of a MAP request. Some countries consider providing for the suspension or deferral of the requirement to pay a tax liability and/or collection action to be a best practice for tax administrations.

There are a number of reasons why a suspension or deferral of collection procedures may be considered a desirable and appropriate policy. As a threshold matter, requiring a taxpayer to pay a tax assessment as a condition to request MAP assistance with respect to the tax that is being assessed is viewed by some countries as inconsistent with the goal of making the MAP broadly accessible.

A requirement to pay tax prior to a MAP resolution may also impose significant costs on a taxpayer. Even where the competent authorities eliminate double taxation through the MAP, the taxpayer will still lose the time value of any amounts that are ultimately refunded to it in the common case in which there are asymmetries between the interest policies of the two contracting states involved. In addition, even where the economic burden of the taxpayer's pre-MAP tax payment is removed, the taxpayer may face significant cash flow burdens connected with the payment that are inconsistent with the tax convention goal of promoting cross-border trade and investment.

As in the case of interest relief, changes to the domestic law of a contracting state may be required to permit the competent authority to suspend or defer the payment of tax and/or collection action.

2.5. Other MAP programs: Advance Pricing Arrangements

Advance Pricing Arrangements (APAs) are an additional important component of the MAP program in many contracting states. The implementation and promotion of APA programs is seen by many jurisdictions as a desirable goal given the certainty they provide to both taxpayers and tax administrations and because they offer a cost-effective method to reduce the number of future transfer pricing disputes.

An APA is a bilateral agreement through which the tax authorities of two contracting states determine, upon application by the taxpayer and in advance of the relevant taxable period, the tax consequences in both states of specific related party transactions and/or activities. In an APA, the competent authorities prospectively agree on a transfer pricing methodology and its application to identified non-arm's length transactions and/or activities, with the objective of avoiding the potential international double taxation that may often arise in transfer pricing cases.

Of course, an APA will only be available to a taxpayer if a contracting state has instituted an APA program. As with many other aspects of the MAP, Article 25 of the UN Model Tax Convention is silent with respect to APAs. A contracting state that wishes to establish an APA program must accordingly develop its own procedures for the conduct of the APA program.

As an initial matter, a contracting state that institutes an APA program must determine how a taxpayer requests an APA, including, for example, the format of an APA request and related documentation requirements. The contracting state must also determine how APA requests will be processed, and, more generally, how its APA

program will be administered. This information and other guidance should be made readily available to the public to promote transparency and to encourage taxpayer use of the APA program.

One example of comprehensive taxpayer guidance on the domestic conduct of an APA program is provided in the case of the United States by Revenue Procedure 2006-9, 2006-2 C.B. 278 (January 9, 2006).[28]

Contracting states must also jointly determine how bilateral APA negotiations will be conducted. The generally applicable MAP procedures may provide some guidance in this regard, but certain modifications or adaptations may be appropriate in light of the unique characteristics and complexity of transfer pricing cases. In particular, in developing bilateral procedures for APA negotiations, the contracting states should take into account the specific requirements of their domestic transfer pricing laws, including, for example, their requirements with respect to documentation.

Although APA negotiations are conducted pursuant to the general authority of the MAP article, the contracting states must also determine the interaction of their domestic laws with an APA. A contracting state should clarify the legal effect of an APA under its domestic law, preferably in the public guidance promulgated with respect to its APA program. A contracting state should also examine whether changes to its domestic law are necessary to implement an APA program, which may include an examination of issues such as the scope of the competent authority's legal authority and the ability of a tax administration to enter into an agreement with a taxpayer with respect to prospective tax liabilities.

2.6. Resolving issues that prevent a mutual agreement

As noted above, the free flow of international trade and investment and the transfer of technology all play important complementary roles in the economic development process in developing countries and countries in transition. By providing legal certainty that these activities will not be subject to international double taxation, tax conventions encourage foreign investors to participate in the economic life of these countries and thereby to contribute to their growth and prosperity.

Given the scope and complexity of the issues that a tax convention must address, contracting states will inevitably have occasional differences of view on how the convention should be applied in specific cases. In the absence of a mechanism to resolve such disagreements, the certainty provided by the tax convention may be compromised.

A mechanism for dispute resolution, such as the MAP provided for in Article 25 of the UN Model Tax Convention, is thus an essential component of any tax convention. Certain shortcomings in the traditional Article 25 MAP, however, may make the consideration of supplementary dispute resolution mechanisms necessary and appropriate.

Paragraph 2 of Article 25 of the UN Model Tax Convention provides that the competent authorities shall endeavour to resolve by mutual agreement cases of taxation not in accordance with the Convention. Paragraph 3 of Article 25 similarly provides that the competent authorities shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Convention.

This language does not oblige the contracting states to reach agreement in the MAP, but only to use their best efforts to do so. As a result, there will occasionally be circumstances in which the competent authorities are

[28] Revenue Procedure 2006-9 may be consulted at: http://www.irs.gov/pub/irs-drop/rp-06-9.pdf.

unable to agree on a MAP resolution and the MAP case is closed without an agreement.[29] In such situations, there may be unrelieved double taxation or taxation not in accordance with the convention.

The language of Article 25 similarly does not oblige the contracting states to reach timely agreement in the MAP. Where taxation not in accordance with the convention remains unresolved for an unreasonably long period, taxpayers may face many of the same burdens that they would face in a situation in which there is no competent authority agreement in the MAP.

This inability to ensure a final (or timely) resolution of MAP cases is one of the primary obstacles to an effective MAP. When a taxpayer or a tax administration is unsure that a matter will be resolved through the MAP, it may be hesitant to commit time and resources to seeking a MAP resolution. In addition, a competent authority may not take all possible steps to find a resolution through the MAP where there is no obligation to do so and no mechanism in place to break a stalemate in MAP negotiations.

In light of these shortcomings of the MAP, many tax administrations and taxpayers believe that the MAP could be improved through the addition of supplementary dispute resolution techniques to resolve issues that have prevented competent authorities from reaching agreement in the MAP. These techniques – which include mediation, conciliation, and arbitration – would be incorporated into the MAP, not as an alternative method of resolving tax treaty disputes, but as a tool to ensure that the competent authorities are able to reach an agreed solution to a taxpayer's case.

Supplementary dispute resolution mechanisms may increase the effectiveness of the MAP even in cases in which they are not used. Their contributions to the overall success of a MAP program may include the following:

- Greater use of the MAP. The MAP plays an essential role in assuring that an income tax convention is properly interpreted and applied. Where taxpayers or tax administrations are reluctant to use the MAP because of concerns that no resolution will be reached, this role may be undermined. Where tax administrations and taxpayers can be sure that the time and resources they put into the MAP will lead to a resolution, however, they will be encouraged to make use of the MAP.

- More efficient use of the MAP. The existence of supplementary dispute resolution mechanisms may encourage competent authorities to conduct their MAP consultations more efficiently, with a view to resolving MAP cases before these mechanisms are triggered. A more efficient MAP will in turn assure optimal use of scarce tax administration resources and build taxpayer confidence in the MAP process.

- Greater competent authority cooperation. The goal of resolving MAP cases before supplementary dispute resolution mechanisms are triggered may also encourage more flexible negotiating positions and a more collaborative approach to problem solving in MAP discussions. Greater cooperation will enhance the competent authorities' working relationship and should itself contribute to the efficiency of the MAP.

Where no agreement is reached in the MAP, a taxpayer that has taken appropriate measures to protect its ability to pursue domestic relief procedures (such as court or administrative appeals procedures) may be expected to do so in one or both of the contracting states. By guaranteeing a resolution, however, supplementary dispute

[29] A taxpayer should, of course, be promptly notified by the competent authority to which it submitted its request for MAP assistance if the competent authorities have determined to close its MAP case without a resolution.

resolution mechanisms should also help to reduce the likelihood of costly and time-consuming domestic proceedings, as well as potentially inconsistent court decisions.