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Mutual agreement procedure

**UN GMAP FLOWCHART. DISCUSSION DRAFT
RESOLVING CROSS-BORDER CONTROVERSIES STEP BY STEP**

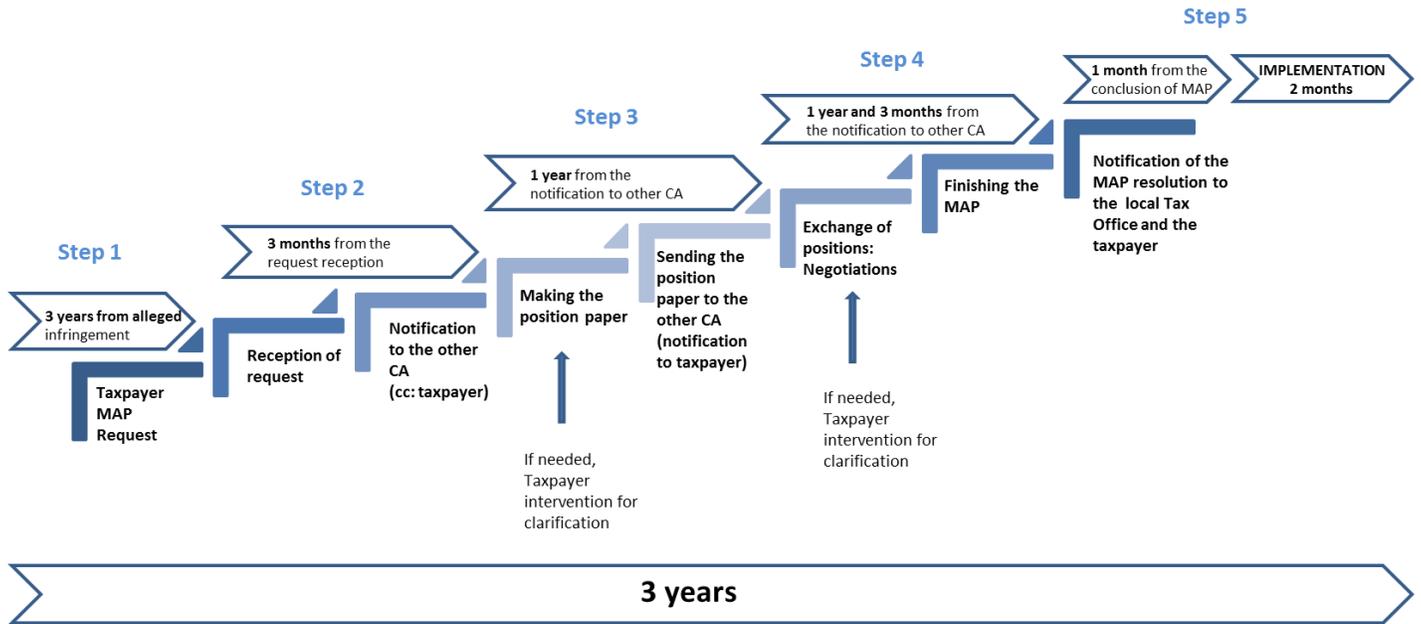
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Introduction

This document is a discussion draft focused on procedure but it also takes into account the general Framework of the MAP: significance and function, legal features, type of MAP cases, MAP as a tool for preventing tax controversies (BAPAs), Competent Authorities obligations according to the MAP, interrelationship with domestic remedies, CAP & examiners role, and Taxpayer role, rights and obligations within the MAP.

This Flowchart intends to be a starting point to elaborate a clear guidance for helping avoid unexpected results and therefore helping minimize controversy. Guidance can serve these purposes only if it is clear and detailed enough to be properly understood by both tax administrations and taxpayers.

GMAP Flowchart



1. First step (Initiation)

The first step starts with the MAP request by the taxpayer; the limit of time for this step is three years from alleged infringement.

Factors to be taken into consideration:

- a. Types of MAP cases (taxation not in accordance with the treaty, interpretation or application cases, others)
- b. When the three-years period begins
- c. Suspension of domestic processes, suspension of the tax payment and the elements that conform the tax due (interests, penalties...).
- d. Legitimacy for requesting, type of information that should accompany a taxpayer’s MAP request, how to present the request (flexibility but a template could help) and before which CA the request should be applied.
- e. Cases not covered by the MAP (taxes, taxpayers or tax periods not covered by treaties).

2. Second step (Reception)

This second step includes the reception of the MAP request, confirmation to the taxpayer and preliminary review of the case by the CA that received the request, and if it's necessary this CA could request additional information from the taxpayer. In the event that the CA of the country that initiated the adjustment can reach a satisfactory solution on its own, i.e. provide unilateral relief, it will notify this circumstance in the position paper.

After that, the CA analyzes the request and will notify to the taxpayer and the other administration if the case is accepted or rejected.

Finally, the other CA will confirm the receipt of the MAP application and after its study will make the decision to accept or reject the request. The consequences of not confirmation could be the implicit acceptance.

This process will have to be carried out in a maximum term of three months from the request reception.

Factors to be taken into consideration:

- 2.1 Period of time to request additional information if needed as well as to accept or reject the MAP request by both CA.
- 2.2 Grounds for refusal. (very limited)

3. Third step (Development)

In the event of a positive response, the position paper will be made by the CA of the country that initiated the adjustment and then, will be sent to the other CA which will provide a response to the position paper following the review of the case.

This phase will be completed within a year from the notification to other CA.

Factors to be taken into consideration:

- 3.1 Face to face meetings and the elaboration of the position paper. It should be clear for both CA.
- 3.2 Possibilities of taxpayer's intervention.
- 3.3 The role of mediation/conciliation to reach an agreement.

4. Fourth step (Resolution)

This step encompasses all exchange of positions in negotiations between the CAs. The CA agreement document takes the form that the parties have agreed bilaterally.

After the approval of the agreement, it will be notified with terms and conditions to all the interested parties, including the taxpayer and the administrative-territorial subdivisions or any local authorities when necessary or required.

The maximum period for this stage is one year and three months.

Factors to be taken into consideration:

- 4.1 Final resolution and agreement documentation.
- 4.2 Time limits for notification.
- 4.3 Consequences when the CAs are unable to come to an agreement. (arbitration or other mechanisms)
- 4.4 How and when a taxpayer can withdraw a request and the acceptance of taxpayer.

5. Fifth step (Implementation)

In this stage the resolution will be notified to the local Tax Office and the taxpayer, and finally, the implementation of mutual agreement will be held no later than two months.

Factors to be taken into consideration:

- 5.1 Effective implementation of the MAP agreement and statues of limitations of the Contracting States.
- 5.2 Which Tax Office implements the agreement?
- 5.3 Statistics of MAP cases and MAP transparency.
- 5.4 Communication of the implementation of the agreement to the other CA.