

Malaysia Issues FAQs on Mutual Agreement Procedure

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The Inland Revenue Board (IRB) has recently issued a list of frequently asked questions (FAQs) on the mutual agreement procedure (MAP) to provide further clarification to the [2017 MAP guidelines](#).

The salient features of the FAQs are set out below.

- A taxpayer may invoke the MAP if the taxpayer considers the action of the tax authority results or will result in taxation that is not in accordance with the relevant tax treaty.
- Generally, the time limit for a MAP request under the tax treaties concluded between Malaysia and its treaty partners is 3 years, calculated from the date when the first notice of assessment was issued.
- A taxpayer must formally request for MAP in writing and address it to both addresses of the competent authority in the Department of International Taxation and the Ministry of Finance.
- A MAP request must indicate at least one article in the relevant tax treaty. In addition, the taxpayer must establish reasons for eliminating double taxation that arises in relation to the MAP issue.
- The taxpayer is required to show that the element of double taxation related to the MAP issues is probable and not just possible to arise, for instance, in disputing the interpretation or the application of a domestic provision that is believed to result in taxation not in accordance with the applicable tax treaty.
- Examples of MAP issues include:
 - allocation and attribution cases in the event of transfer pricing audits;
 - dispute on the residence status of a taxpayer;
 - dispute on the withholding tax; and
 - dispute on the characterisation of income as royalty which leads to audit adjustments and double taxation.
- Pre-filing is required for MAP cases submitted to Malaysia's competent authority. The acceptance of a MAP request will be based on its eligibility. Hence, a request is considered official when approved by the Malaysian competent authority.
- Taxpayers need to indicate clearly the amount of double taxation disputed in the MAP request. The amount must be supported by relevant documents and computations.
- A case will be considered closed under the following situations:
 - a taxpayer rejects the outcome, where the taxpayer is not satisfied with the outcome arrived at by the competent authorities; or
 - a taxpayer withdraws the MAP request at any point prior to a MAP outcome being reached. In this situation, the taxpayer cannot resubmit another MAP request for the same issue for the same year of assessment.

The full details of the FAQs are available [here](#). For previous reporting, see [Malaysia Updates Procedures for Appeals Against Tax Assessments and Applications for Relief \(7 October 2020\)](#).

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