

## MUTUAL AGREEMENT PROCEDURES (MAPs)

### Minimum Information Requirements

#### Background

An Article dealing with the Mutual Agreement Procedure (MAP) is contained in most of South Africa's Double Taxation Agreements (DTAs). The Article provides for a MAP for resolving difficulties arising out of the application of a particular Article in a DTA.

In terms of paragraphs 1 and 2 of the MAP Article, the Competent Authority for a Contracting State/Jurisdiction shall endeavour by mutual agreement to resolve the situation of taxpayers subjected to taxation not in accordance with the provisions of the DTA.

#### Competent Authority in South Africa

In South Africa the Competent Authority is the Commissioner for the South African Revenue Service. The Commissioner delegates the duty of Competent Authority for MAP purposes to designated representatives in the Legislative Research and Development subdivision within Legal Counsel.

#### MAP Request for Assistance

The MAP article in a particular DTA allows the Competent Authorities from the governments of the Contracting States/Jurisdictions to interact directly with the intent to endeavour to resolve international tax disputes. These are done in terms of a MAP Request for Assistance.

A MAP Request is submitted to the Competent Authority of the taxpayer's State of residence or can be submitted to the Competent Authorities of both Contracting States/Jurisdictions in cases where the taxpayer considers that the actions of one or both countries' tax administrations resulted or will result in taxation not in accordance with that DTA. The taxpayer should notify both Competent Authorities that it submitted its MAP request to the competent authority of the other jurisdiction.

The request must be presented by the taxpayer within the period specified in the relevant DTA. It is important to note that this period may differ depending on the DTA.

In cases where the Competent Authority of the State of residence of the taxpayer agrees with the taxpayer, but is not able to resolve the matter itself, the first-mentioned Competent Authority will raise the matter with the Competent Authority of that other Contracting State/Jurisdiction.

Requests need to comply with specific minimum information requirements in order for the Competent Authority of the State of residence to be able to process the particular request. The minimum information requirements for a MAP Request depend on what type of MAP Request is involved.

### **Types of MAP Requests**

The content of a MAP Request can include details on any of the following:

1. Transfer pricing adjustment requests
2. Attribution of profits of a permanent establishment
3. Dual residence of individuals and persons other than individuals
4. Withholding tax levied beyond what is permitted by the applicable DTA
5. Any other case in which a person considers that the taxation is not in accordance with the applicable DTA

A Transfer pricing MAP request (ref. para. 1 and 2) is, for purposes of the administration, treated separately from the rest. **Transfer Pricing MAP Requests** should be sent to a specific designated mailbox at SARS, namely –

- [TransferPricingMAP@sars.gov.za](mailto:TransferPricingMAP@sars.gov.za)

Those included in paragraphs numbered 3 to 5 above, are treated as **Interpretation MAP Requests**. They need to be sent to a different designated mailbox at SARS:

- [SARSMAP@sars.gov.za](mailto:SARSMAP@sars.gov.za)

### **Minimum Information Required**

The relevant facts and minimum information required for each MAP Request are listed in **Annexure A**.

Information furnished must be substantial and specific and the complete MAP Request must be sent to the specific dedicated email address for that type of MAP Request. Taxpayers wishing to provide information in encrypted format, such as password protected Microsoft Office or PDF files, should send a request to do so to the relevant email address, providing comprehensive contact details and the proposed format.

Separate MAP Requests must be submitted for each taxpayer and/or under each DTA in cases where multiple requests are concerned.



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If applicable, translated copies of supporting documents can be supplied with those in the foreign language to assist the South African Competent Authority in its processing of the MAP Request.

**Note**

**Annexure A** can be used as a checklist by the Competent Authority before requests are sent through.

## Annexure A

<b>Minimum Requirements for a MAP Request for Assistance</b>		
<p><b>Section A – General</b></p> <p><i>This information must be included in all MAP Requests.</i></p> <p><i>Section B lists the additional minimum information requirements for Transfer Pricing MAP Requests.</i></p> <p><i>Use the tick/check box on the right to ensure all minimum information requirements are met.</i></p>		
<b>1.</b>	If a representative is acting on behalf of the taxpayer, a signed statement from a taxpayer that a representative is authorised to act for the taxpayer.	<input type="checkbox"/>
<b>2.</b>	<p><b>Taxpayer details:</b></p> <ul style="list-style-type: none"> <li>• Full names and surname of the individual or company/entity name (for persons other than an individual). <span style="float: right;"><input type="checkbox"/></span></li> <li>• Identification number or birth date or company registration number. <span style="float: right;"><input type="checkbox"/></span></li> <li>• Physical address. <span style="float: right;"><input type="checkbox"/></span></li> <li>• Contact details. <span style="float: right;"><input type="checkbox"/></span></li> <li>• Income tax reference number of the South African resident person. <span style="float: right;"><input type="checkbox"/></span></li> <li>• Relationship between the taxpayers covered in the MAP request (where applicable) – set out how the relevant enterprises are associated. <span style="float: right;"><input type="checkbox"/></span></li> <li>• Company organogram showing the tax residency or registration of each entity if applicable). <span style="float: right;"><input type="checkbox"/></span></li> </ul>	
<b>3.</b>	<p><b>The basis for the request:</b></p> <ul style="list-style-type: none"> <li>• Specific tax treaty applicable to the case. <span style="float: right;"><input type="checkbox"/></span></li> <li>• Applicable Articles in the treaty which the taxpayer considers is not being correctly applied. <span style="float: right;"><input type="checkbox"/></span></li> <li>• Confirmation that the request is submitted within the specified time limit under the MAP Article (where relevant) or within any domestic time limits for filing of objections/appeals. Refer to 3.2 of the External Guide on MAPs – “Time limits for requesting a mutual agreement procedure”. <span style="float: right;"><input type="checkbox"/></span></li> </ul>	

**– Section A continues –**

<b>4.</b>	<b>Facts of the case:</b> <ul style="list-style-type: none"><li>• All the facts of the case<ul style="list-style-type: none"><li>➤ Documentation to support these facts including correspondence, agreements/contracts, tax certificates, receipts etc. (Please provide an English translation of documents in a foreign language)</li></ul></li><li>• Taxation years involved</li><li>• Amounts involved (in both the local currency and foreign currency)</li></ul>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>
<b>5.</b>	<b>Analysis of the issue(s) requested to be resolved via MAP:</b> <ul style="list-style-type: none"><li>• Analysis of the issue(s) involved, including the taxpayer's interpretation of the application of the specific treaty provision(s) or transfer pricing guidelines, to support its basis for the MAP request</li><li>• Supporting documents for analysis, for example, documentation required under transfer pricing legislation or published guidance, copies of tax assessments, relevant correspondence etc</li><li>• An identification of the domestic and DTA time limits in the relevant jurisdictions in respect of the years for which relief is sought</li><li>• Any other facts that the taxpayer may consider relevant</li></ul>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>
<b>6.</b>	<b>A statement indicating</b> whether the taxpayer has submitted the MAP request to the other jurisdiction or to another authority. If so, the taxpayer should provide: <ul style="list-style-type: none"><li>• The date of such submission</li><li>• The name and the designation of the person or the office to which the MAP request was submitted</li><li>• A copy of the submission (including all documents filed with the submission, unless exactly the same as this MAP request)</li><li>• Whether the issue(s) involved were previously dealt with, for example, in an advance ruling, advance pricing arrangement, settlement agreement or any tax tribunal or court. If so, the taxpayer should provide a copy of these rulings or agreements or decisions</li></ul>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>
<b>7.</b>	A statement confirming that all information and documentation provided in the MAP request is accurate and that the taxpayer will assist the competent authority in its endeavours to resolve the MAP request by furnishing any other information or documentation required by the competent authority in a timely manner	<input type="checkbox"/>

**– Section A continues –**

<b>8.</b>	<p><b><i>In case of withholding tax</i></b></p> <p><b>The following minimum information in addition to the above must be provided <u>of the person who withheld the tax</u>:</b></p> <ul style="list-style-type: none"> <li>• Full names and surname <span style="float: right;"><input type="checkbox"/></span></li> <li>• Physical address <span style="float: right;"><input type="checkbox"/></span></li> <li>• Contact details <span style="float: right;"><input type="checkbox"/></span></li> <li>• The taxpayer reference number (if known) <span style="float: right;"><input type="checkbox"/></span></li> <li>• All receipts of tax withheld <span style="float: right;"><input type="checkbox"/></span></li> </ul>	
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**Section B – Transfer Pricing MAP Requests**

*This information is additional to the required minimum information requirements listed in Section A. Use the tick/check box on the right to ensure all minimum information requirements are met.*

<b>9.</b>	<ul style="list-style-type: none"> <li>• Details regarding the adjustment (or proposed adjustment) in addition to the facts provided above:             <ul style="list-style-type: none"> <li>➤ Calculations setting out the adjustment or proposed adjustment translated in both currencies <span style="float: right;"><input type="checkbox"/></span></li> <li>➤ State how effect was given to the adjustment in practice including an explanation of the accounting treatment <span style="float: right;"><input type="checkbox"/></span></li> <li>➤ State clearly whether any portion of the adjustment relates to secondary adjustments <span style="float: right;"><input type="checkbox"/></span></li> <li>➤ State clearly whether any portion of the adjustment relates to interest on unpaid taxes or statutory penalties <span style="float: right;"><input type="checkbox"/></span></li> </ul> </li> <li>• State whether any previous or subsequent years are too be audited where there is a prospect of similar issues arising <span style="float: right;"><input type="checkbox"/></span></li> </ul>	
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**– Section B continues –**

	<ul style="list-style-type: none"> <li>• An indication of any specific issues raised by the foreign competent authority. Set out those elements of the transfer pricing policy that the other jurisdiction did not agree with and why, and how the associated enterprise sought to rebut the other jurisdiction’s findings, including copies of all relevant correspondence <input type="checkbox"/></li>   <li>• Statements indicating whether the taxpayer has – <input type="checkbox"/> <ul style="list-style-type: none"> <li>➤ filed a refund claim; or <input type="checkbox"/></li> <li>➤ entered into a settlement agreement, in either of the jurisdictions related to the relief sought. <input type="checkbox"/></li> </ul> </li>   <li>• Supporting documents in addition to the supporting documents listed above should include the following: <input type="checkbox"/> <ul style="list-style-type: none"> <li>➤ Copies of the financial statements of both related parties <input type="checkbox"/></li> <li>➤ Copies of the South African and foreign-related parties’ transfer pricing policies or documentation and benchmarking studies whether at a group level or at a company level <input type="checkbox"/></li> <li>➤ Copies of the relevant related party agreements <input type="checkbox"/></li> <li>➤ Copies of the tax return disclosure of the South African taxpayer involved <input type="checkbox"/></li> </ul> </li>   <li>• The following minimum information must be provided of any related foreign taxpayer involved: <input type="checkbox"/> <ul style="list-style-type: none"> <li>➤ Company / entity name <input type="checkbox"/></li> <li>➤ Physical address <input type="checkbox"/></li> <li>➤ Contact details <input type="checkbox"/></li> <li>➤ Tax or other identification number (if possible) <input type="checkbox"/></li> </ul> </li> </ul>	
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**Issued on behalf of the Commissioner for the South African Revenue Service**