



United Arab Emirates Mutual Agreement Procedure Guidance

Introduction

What is MAP?

The Mutual Agreement Procedure ('MAP') is a process by which the United Arab Emirates ('UAE') and other contracting states in Double Tax Agreements ('DTA') seek to resolve international tax disputes, which result, or will result in taxation, that is not in accordance with the DTA.¹ A MAP may also be sought where there is an issue of interpretation or application of the relevant DTA and where double taxation arises for cases not provided for in the relevant DTA.

The purpose of this guidance is to outline to taxpayers:

- What is MAP?
- When is MAP applicable?
- What information is required for a MAP claim?
- What is the process for MAP?

Background

Double Tax Agreements

The UAE has over 100 in force DTAs with other contracting states around the globe. In force DTAs are legally binding international agreements between the UAE and the other contracting state.

¹ The remainder of the guidance refers to 'double taxation' but this should be understood to mean 'taxation not in accordance' with the applicable DTA.

A DTA is an international agreement signed by two countries for the avoidance of double taxation and the prevention of fiscal evasion of taxes on income and capital. DTAs provide a means of settling the most common problems that arise in the field of international double taxation, on a uniform basis.²

As such, the primary purpose of a DTA is the elimination of double taxation with respect to taxes on income and on capital. A DTA will typically allocate the taxing rights in relation to income or profits between states to reduce instances of double taxation. Furthermore, a DTA will also seek to prevent economic double taxation whereby, for example, the same income is taxed in two different states in the hands of two different taxpayers (this is most typically found in transfer pricing cases).

Legal basis

The legal basis for a MAP request is derived from the DTAs that the UAE has with other contracting states.

The relevant MAP clause in a DTA is typically based on Article 25 of the OECD Model Tax Convention ('MTC') on Income and Capital.

The adoption of Article 25 of the MTC is reflected in the UAE's DTAs either through the bilateral negotiation of a new or existing DTA, or the update of a DTA. In addition, the UAE is a signatory to and has ratified the "OECD Multilateral Convention to implement tax treaty related measures to prevent base erosion and profit shifting" ('MLI') and chose to adopt the MAP provisions. This has allowed the UAE to automatically update its DTAs with other MLI signatories if the relevant DTA is considered a "covered tax agreement" by both DTA parties and they have aligned their MLI positions.

² OECD Manual on Effective Mutual Agreement Procedures ('MEMAP')

However, it should be noted that different states may have registered reservations, or made notifications, to the MLI that are not aligned with the UAE's position, in which case, certain provisions of the MLI will not apply to these DTAs. Furthermore, as the UAE continues to expand and update its DTAs, it is, therefore, imperative for taxpayers to ensure that the relevant DTA is consulted for each individual MAP claim.

Competent Authority

A Competent Authority is defined under each DTA. In the UAE, the Competent Authority is often defined as “the Minister of Finance or his authorised representative or Ministry of Finance”, and its function is delegated to the International Tax Department, within the Tax Policy Sector, of the Ministry of Finance.

The UAE Competent Authority ('UAE CA') is an independent and separate from the Federal Tax Authority ('FTA'). This is in line with best practice and allows the UAE CA to pursue its objectives under the DTA. The role of the UAE CA, under the MAP provisions of the DTA, is to endeavor to eliminate double taxation and not to re-audit the taxpayer. Taxpayers should be cognizant of this when interacting with the UAE CA.

Federal Tax Authority

The FTA, as the tax authority in the UAE, is responsible for administering the UAE federal tax system, which includes amongst its other responsibilities, auditing taxpayers, issuing tax assessments and implementing adjustments agreed by the UAE CA with treaty states. As such, dedicated members of the FTA, who are independent of the tax audit function, will work together with the UAE CA on MAP cases and will be part of the MAP process.

The FTA will also be responsible for implementing any MAP agreement reached, or assisting the UAE CA to obtain any relevant documents in respect of a MAP claim (for example, a copy of a tax assessment).

MAP process

When is MAP available?

Step 1: Eligibility

In order to be eligible for MAP, a person (as defined by the relevant DTA) must consider that the *“actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions”*³ of the relevant DTA.

There are various scenarios of where this may occur. For example:

- A transfer pricing adjustment (as a result of a tax audit) is imposed on the UAE taxpayer by the FTA on a cross-border transaction. In the absence of a corresponding deduction in the foreign jurisdiction, the taxpayer will suffer economic double taxation. Therefore, the taxpayer can seek the Competent Authority's assistance, via a MAP request for a:
 - Withdrawal/Reduction of the adjustment imposed by the FTA in the UAE; and/or
 - Corresponding deduction by the foreign tax authority⁴.
- Where a taxpayer (either a juridical or natural person) is deemed to be a resident for tax purposes under the domestic tax legislation of more than one state, this could lead to double taxation. Therefore, a taxpayer can seek the assistance of

³ Article 25 (1) of the MTC (or relevant Article reference in the relevant UAE DTA).

⁴ Please note that Article 34 (11) of the UAE Corporate Tax Law allows taxpayers to also submit an application to the FTA in the event of an adjustment by a foreign competent authority.

one or both Competent Authorities under the appropriate provisions of the DTA, to determine its tax residency status.

- A taxpayer has a permanent establishment/branch in another state and is subject to an adjustment of the profits attributable to that branch (this may be in the case also of a foreign headquartered taxpayer having a UAE permanent establishment or a UAE headquartered taxpayer having a foreign permanent establishment), the taxpayer may seek the CA's assistance to prevent double taxation by way, for example, of an increased foreign tax credit and/or request the Competent Authority of the other contracting state to provide relief.

The above is not an exhaustive list of scenarios where the MAP process is eligible but covers the most typical cases.

Domestic/Anti-abuse provisions

In addition to the above scenarios, MAP submissions may also be made if the taxpayer believes that the anti-abuse provision in the applicable DTA applies, or the application of the UAE's general anti-abuse rule under the UAE Corporate Tax law, conflicts with the provision of the applicable DTA. However, as with all MAP submissions, each submission will be assessed in respect of the facts and circumstances within the context of the respective DTA.

It should be noted that the application of the general anti-abuse measure, under UAE Corporate Tax Law, is outside the scope of MAP as it relates to the interpretation of domestic law.

Multilateral disputes

There may be instances where multilateral tax disputes occur, especially in transfer pricing cases. For example, a global transfer pricing model may implement a profit split method across multiple states and the allocation of such profit may result in double taxation across multiple states.

In such scenarios, it is possible for the UAE Competent Authority to enter into a multilateral MAP involving two or more states, subject to the provisions of the individual DTAs that the UAE has with the relevant states of each MAP claim.

Bona-fide self-initiated adjustments

The UAE Corporate Tax law allows taxpayers to make self-assessed transfer pricing adjustments in their tax return. The UAE CA, as per the Commentary to the MTC⁵, will deem such self-initiated adjustments permissible under MAP, should this result in double taxation.

The position of the UAE CA is that such self-initiated adjustments should only be undertaken under the strict condition that they are done in good faith and are supported by thorough transfer pricing documentation and economic analysis.

Surrendering access to MAP

It is possible that concluded tax audits in certain states may require taxpayers to surrender their access to MAP as part of an audit settlement. The UAE CA will not consider this to be a valid reason for denial of access to MAP in the UAE.

⁵ Paragraph 14 on Article 25

Time limit

The latest UAE DTAs reflect the MTC which state that a “*case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Convention.*”⁶

In line with MTC guidance, the UAE CA exercises a reasonable policy in the enforcement of timelines (under the DTA) in cases where the time limits are close to being breached (or have recently been breached) but this should not preclude the taxpayer from making a timely MAP submission.

Furthermore, the taxpayer should consider any time limits in line with the provisions of the DTA. This is particularly relevant where the DTA states “Where a person considers that the actions of one or both of the Contracting States result or **will** result for him in taxation not in accordance...”. For example, if the taxpayer is undergoing a transfer pricing audit and it is probable that a transfer pricing adjustment is likely (for example, if a tax assessment was raised regarding the same issue in prior periods), the taxpayer will be able to submit a MAP claim from the point that it believes an adjustment is probable. As a result, a taxpayer will not have to wait for the formal notification of a tax adjustment before filing a MAP request.

Domestic remedies

Where a taxpayer seeks to initiate MAP while pursuing the UAE’s domestic legal remedies (either through the Tax Dispute Resolution Committee or the UAE domestic judicial courts) to appeal an FTA tax audit/assessment, the UAE CA follows the approach

⁶ The applicable tax treaty should be consulted to confirm the relevant time limit.

described in the Commentary on Article 25 at Paragraph 76 of the MTC, whereby a taxpayer cannot simultaneously pursue MAP and domestic legal remedies.

However, a MAP claim may be presented to the UAE CA and accepted, while domestic remedies are still available, to avoid the case being 'time-barred' by the time limits in the applicable DTA. In such cases, the UAE CA will first require the taxpayer to agree to the suspension of domestic legal remedies, and if the taxpayer does not agree, the MAP claim will be delayed until the domestic legal remedies are concluded.

Similarly, where a taxpayer pursues a MAP claim first and rejects the outcome of the MAP claim once it is concluded, the taxpayer is free to pursue domestic legal remedies (where relevant).

If the taxpayer accepts the outcome of the MAP agreement, then the taxpayer will be required to provide written confirmation of the withdrawal of any domestic legal remedies filed, and renounce access to domestic legal remedies relating to the same issue(s) and period covered by the MAP agreement.

Impact of domestic legal rulings

If a final ruling is issued by a UAE domestic judicial court or by the Tax Dispute Resolution Committee, the UAE CA is legally bound by such decision. Therefore, whilst MAP is still accessible to the taxpayer, the UAE CA's scope of assistance will be limited, and any relief sought by the taxpayer would only be available from the Competent Authority of the other contracting state, if applicable.

Similarly, there may be domestic remedies available to the taxpayer (outside of the MAP process) in the other contracting state, but these may also be binding on the Competent

Authority of the other contracting state. Therefore, whilst the UAE CA may still be able to grant relief, in such instances, it may not be possible to eliminate double taxation.

Overall, the taxpayer should take due care to evaluate the interaction of domestic remedies in all relevant states and its access to MAP before deciding on a course of action.

Step 2: Filing a MAP claim

What information is required for a MAP claim?

To qualify as a valid MAP claim, a taxpayer should provide the following information as part of its MAP submission to the UAE CA:

1. The name, address, and taxpayer identification number of the taxpayer – also state whether the taxpayer is a Qualifying Free Zone Person under the UAE Corporate Tax legislation;
2. For transfer pricing cases – the name, address and the taxpayer identification number of any related foreign taxpayer involved;
3. The name of the foreign tax administration involved and identification of the regional or local tax administration office and officers that has made, or is proposing to make, the adjustment (if relevant);
4. The DTA article(s) that the taxpayer asserts is not being correctly applied, and the taxpayer's interpretation of the application of the article;
5. The fiscal years or periods involved;
6. The relationship, situation, or structure of the transactions, issues, or related parties involved (advising of any changes in these matters that occur after the request has been filed would also be helpful);

7. A summary of the facts and an analysis of the issues for which Competent Authority assistance is requested, including any specific issues raised by the tax administrations affecting the taxpayer and the related amounts (in both currencies⁷ and supported by calculations, if applicable);
8. For transfer pricing cases, transfer pricing documentation prepared in line with the requirements of the domestic transfer pricing legislation (including economic analysis) and, if applicable, a copy of the Group Masterfile;
9. Copies of correspondence with the Competent Authority of any relevant jurisdiction as well copies of any relevant tax assessments;
10. An indication of whether the taxpayer or a predecessor has made a prior request to the Competent Authority of either contracting state on the same or related issue;
11. A schedule of the time limitations in each jurisdiction (domestic as well as tax convention time limits) in respect of the years for which relief is sought (in cases of multiple taxpayers, a schedule for each);
12. A statement indicating whether the taxpayer has filed a notice of objection, notice of appeal, refund claim, or comparable document in either of the relevant states and/or is pursuing any other domestic remedies;
13. If consent has not already been provided for a person to act as an authorised representative, a signed statement that a representative is authorised to act for a taxpayer in making the request;
14. Copies of any relevant tax rulings including any Advanced Pricing Agreement concluded and public/private clarifications issued by the FTA;

⁷ Taxpayers should provide any exchange rates used.

15. For cases involving tax residency, copies of tax residency certificates for the fiscal years relating to the MAP claim;
16. For cases involving the tax residency of natural persons:
 - a. Confirmation of the type of tax and type of income subject to double taxation;
 - b. Information regarding days spent in the UAE and evidence of permanent residence in the UAE for the fiscal years relating to the MAP claim (e.g. passport stamps, utility bills demonstrating active occupancy of a property).
17. A copy of any settlement or agreement reached with the other jurisdiction which may affect the MAP process; and
18. The taxpayer's views on any possible bases on which to resolve the issues;
19. Any other information or facts that the taxpayer may consider relevant.

Documents submitted to the UAE CA should be in English or Arabic. The UAE CA or the corresponding Competent Authority (where applicable), may request bilingual translations of any Arabic or English documents provided as part of the submission.

The above is a comprehensive (but not exhaustive) list of information. Taxpayers should seek to provide as much of the information above (as applicable) in its initial MAP claim to assist the UAE CA in providing the most effective assistance to the taxpayer. However, each MAP claim is unique and therefore the UAE CA will assess the adequacy of the information provided on a case-by-case basis.

If the UAE CA requires additional information, the UAE CA will strive to contact the taxpayer within two months of the initial submission of the MAP claim. In order to provide an effective and timely solution to the taxpayer, the taxpayer should seek to respond to

any request for additional information within one month. If the additional information is not furnished within three months, the UAE CA may discontinue the MAP process.

The submission of a MAP claim should be signed by the taxpayer, or a delegated authorised person, confirming that all information and documentation provided in the MAP request is accurate, and that the taxpayer will assist the UAE CA in its resolution of the issue(s) presented in the MAP request by furnishing any other information or documentation required by the UAE CA in a timely manner, or in line with timelines set out in this MAP guidance.

Multi-year periods

To avoid duplicate MAP requests and permit a more efficient use of the UAE CA's resources, a taxpayer will be allowed to request a multi-year resolution via MAP for a recurring issue, provided that for each relevant year, the facts and circumstances of the issue are the same and the MAP request is submitted within the time limit specified in the DTA. Where a taxpayer submits more than one MAP request for the same issue over several years, the UAE CA will aim to deal with all such requests in a coordinated manner.

Who should the MAP claim be submitted to?

The latest UAE DTAs allow for the taxpayer to make a MAP request to the Competent Authority of either contracting state whilst the older DTAs (that have not been amended by the MLI) typically require the taxpayer to approach the Competent Authority of the contracting state in which they are tax resident.

If permitted by the DTA (and especially in transfer pricing cases), the taxpayer is encouraged to submit their MAP requests to the Competent Authorities of both countries (containing the same information). Whilst the Competent Authority would notify the other

Competent Authority of receipt of any MAP claim (whether the claim is found to be eligible or not), submission of the MAP claim to both Competent Authorities will benefit the taxpayer in shortening the timeline for assessing the eligibility of a MAP claim.

MAP claims to the UAE CA should be submitted to:

uaemap@mof.gov.ae

Step 3: Assessment of MAP claim

Once the UAE CA has received a MAP claim, it will be assessed to verify that the MAP claim is complete, submitted within the time limit of the relevant DTA and whether the objection raised by the taxpayer is justified.

The UAE CA will endeavor to respond to the taxpayer within two months on its decision as to whether or not to accept the MAP claim.

If a MAP claim is rejected, the UAE CA will contact the corresponding Competent Authority first and the taxpayer separately to explain the basis for rejection.

Step 4: Objection justified

Step 4 a): Unilateral relief

If the MAP claim is accepted and the objection is justified, the UAE CA will first assess whether it can provide relief unilaterally. If not, the UAE CA will then commence bilateral protocols and seek to resolve the case by mutual agreement with the corresponding Competent Authority.

In either scenario, the UAE CA will contact the corresponding Competent Authority, once all the requisite information is received, to inform them about the submission of a MAP claim.

Step 4 b): Bilateral Negotiation

If the UAE CA deems the objection to be justified and the UAE CA alone cannot provide full relief to (economic) double taxation, then the MAP claim will enter the bilateral negotiation phase. As part of this, the UAE CA will typically prepare a 'position' paper, based on the facts and information provided by the taxpayer as part of its MAP submission, that will be shared with the Competent Authority of the relevant counterparty jurisdiction.

This exchange of position papers typically commences the negotiations which are conducted at a Competent Authority level and the taxpayer will not be privy to the negotiations and communications between the Competent Authorities. The taxpayer's involvement is limited to providing its views and assisting in fact-finding. However, at the discretion of the Competent Authorities, the taxpayer may be invited to make a presentation to the Competent Authorities to ensure a common understanding of the facts for a particular MAP claim.

Taxpayer communication

Whilst the taxpayer is not a participant to the negotiation, it is an important stakeholder to the MAP process. As such, the UAE CA will seek to provide updates via telephone/video conference after each significant milestone.

Similarly, as noted above, it is imperative that communication is a two-way process during a MAP process and, therefore, it is important that the taxpayer responds within the requested timelines to any communication from the UAE CA.

Step 5: Outcome

Competent Authority Agreement

If an agreement has been reached between the Competent Authorities, the UAE CA will notify the taxpayer via e-mail within two months from the conclusion of such agreement, where such MAP claim has been filed with the UAE CA. The taxpayer should then seek to reply to the UAE CA confirming its acceptance or rejection of the outcome within one month.

Taxpayer acceptance of MAP Agreement

If the MAP agreement is accepted, the taxpayer should also confirm within its written response, the withdrawal of any domestic remedies filed, and renounce access to domestic remedies relating to the same issue(s) and period covered by the MAP agreement. The UAE CA will share the written acceptance from the taxpayer with the FTA to implement the agreement reached under MAP and the taxpayer should, in parallel, submit a voluntary disclosure to the FTA

Unless otherwise stated, any agreement reached between the Competent Authorities on a particular MAP claim shall not set a precedent for future tax periods or MAP claims, as each MAP claim has its own set of facts and circumstances.

Taxpayer rejection of MAP Agreement

If the taxpayer rejects the agreement, the MAP claim will be considered closed, and the taxpayer will be free to pursue or resume other available domestic remedies in the UAE or the other jurisdiction, where relevant.

No Competent Authority Agreement

The objective of the UAE CA, under a DTA, is to endeavor to eliminate double taxation. Hence, it is possible that an agreement cannot be reached between the Competent Authorities, despite multiple rounds of negotiation. In such a case, the UAE CA will not commit to further discussions if it is of the belief that an agreement cannot be reached, and its best endeavors have been exhausted.

In such a case, it will notify the taxpayer via e-mail stating the reasons it believes an agreement cannot be reached (if the MAP claim was filed with the UAE CA) and, subsequently, the MAP claim will be considered closed.

Timeline

The UAE CA will endeavor to resolve all MAP claims within an average period of 24-months from the date the MAP claim is accepted by the UAE CA. This is dependent on the taxpayer responding, to any information requests from the UAE CA, within one month.

Withdrawal of MAP claim

At any time, the taxpayer can choose to withdraw its MAP claim and, if so, it should notify the UAE CA via e-mail without delay. This may occur, for example, where a domestic remedy has been found in the UAE or the other jurisdiction.

Arbitration

Some of the UAE's DTAs provide access to arbitration for an issue that is unresolved via MAP.

In circumstances where:

1. arbitration is provided for under the relevant DTA; and

2. the UAE CA is unable to reach an agreement with the Competent Authority of the other contracting state to resolve the issue via MAP within the time limit specified in the MAP article of the relevant DTA; and
3. no decision has been issued by a court or tribunal of the UAE or the other contracting state,

the taxpayer may request the UAE CA to refer the unresolved issues to arbitration. Depending on the DTA, this may be a voluntary or mandatory provision and may be requested by either the Competent Authority of either contracting state or by the relevant person that submitted the MAP claim.

Penalties

From a UAE perspective, any penalties levied on the taxpayer in relation to a corporate tax liability subject to MAP shall be adjusted (where applicable) in line with the DTA and the MAP agreement, should the taxpayer accept the outcome of the MAP process. If a MAP agreement is not reached or where the taxpayer does not accept the outcome of the MAP process, any associated penalties levied on the taxpayer in relation to the tax liability will continue to accrue.

Where the penalty is imposed for breaching domestic law provisions such as those relating to maintaining transfer pricing documents, tax registration etc., the penalty will not be adjusted by the UAE CA. However, the taxpayer may be entitled to seek a reduction or waiver of the penalty under the UAE domestic tax laws where the relevant applicable conditions for such a reduction or waiver are met.

Tax

While the MAP process is ongoing, the tax payable under an assessment issued by the FTA, will not be suspended. If the taxpayer accepts a MAP agreement that waives or reduces the tax liability, any tax already paid by the taxpayer to the FTA will be refunded/credited pursuant to an application made to the FTA in accordance with the FTA's procedures. If no MAP agreement is reached, unless the taxpayer obtains relief through other domestic remedies, the tax liability continues to accrue along with any penalties (where applicable).

Key take-aways for taxpayers in the MAP process

1. Assess whether you are subject to double taxation and refer to the relevant DTA.
Most importantly, verify the time limits within which to file a MAP claim.
2. Consider the interaction of domestic remedies that may be available with the MAP process.
3. Conduct thorough fact-finding and retain any relevant records – this will strengthen your MAP claim and the ability of the UAE CA to assist you in seeking a resolution.
4. Respond to the UAE CA within one month and remain transparent in your communications.