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Global Tax Alert

News from Transfer Pricing

India amends Mutual Agreement Procedure rules

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Executive summary

On 6 May 2020, the Indian Central Board of Direct Taxes (CBDT) issued a notification on amending its Mutual Agreement Procedure (MAP) rules (Amended MAP Rules). The amendments are in response to the recommendations of the Organisation for Economic Co-operation and Development's (OECD) peer review report on India¹ with respect to Action 14 (making dispute resolution mechanisms more effective) (the OECD Peer Review Report).

The Amended MAP Rules underscore India's commitment to resolve MAP cases within 24 months and provide additional guidance to taxpayers making use of the MAP in India.

Detailed discussion

India's Double Taxation Agreements (DTAs) include a MAP article based on Article 25 of the OECD Model Tax Convention. While the MAP is of fundamental importance to the proper application and interpretation of DTAs in their entirety, it has emerged as an especially widely used mechanism for resolving transfer pricing disputes.

The OECD Peer Review Report² indicated that the overall experiences of peers in handling and resolving MAP cases with India were generally positive. However, the report contained recommendations on key potential areas of improvement based on the requirements of the Action 14 minimum standard. One of those recommendations was the publishing of clear and comprehensive MAP guidance. The Amended MAP Rules address this recommendation.

Summary of key amendments to the existing MAP rules

Action 14 minimum standard (if applicable)	Amendments to the existing MAP rules
<p>Allow submission of MAP requests to the competent authority (CA) of either treaty partner, or, alternatively, introduce a bilateral consultation or notification process</p>	<ul style="list-style-type: none"> ▶ In the cases where an Indian tax resident considers the actions of a foreign tax authority to be not in accordance with the applicable treaty, the resident can seek to invoke the MAP with the Indian CA, using an amended form. ▶ The amended form requires the Indian resident taxpayer to furnish the details of the remedy sought in the foreign jurisdiction, along with documentary evidence, if any. ▶ According to the OECD Peer Review Report, India did not have a bilateral notification process in place for situations where it considered the objection raised by a taxpayer in its MAP request as not being justified. ▶ The Amended MAP Rules now provide that the Indian CA shall convey the status (application or rejection) of the MAP to the relevant foreign CA.
<p>Provide access to MAP if required information is submitted</p>	<ul style="list-style-type: none"> ▶ The Indian CA office operates independently from the audit and examination function. ▶ Under the amended MAP Rules, the Indian CA can request any relevant records, and additional documents from (1) the Indian tax authorities (audit and exam) or (2) the taxpayer/its authorized representative in India. The Indian CA can also have a discussion to understand the actions taken by the Indian or foreign tax authorities that are not in accordance with the terms of the DTA.
<p>Seek to resolve MAP cases within a 24-month average timeframe</p>	<ul style="list-style-type: none"> ▶ Considering (i) the OECD minimum standard under BEPS Action 14, (ii) India's past track record on MAP resolutions, and (iii) the existing inventory of MAP cases, the Amended MAP Rules provide that the Indian CA shall attempt to resolve MAP cases within 24 months.
	<ul style="list-style-type: none"> ▶ Under the Indian transfer pricing regulations, if the application of arm's-length principle has the effect of reducing the income subject to tax or increasing the reported loss (i.e., computed based on the books of account), the taxable result will not be adjusted. ▶ In line with this, the Amended MAP Rules provide that a MAP invoked due to the actions of the Indian tax authority shall not result in decreasing the income or increasing the loss declared by the Indian taxpayer.

Action 14 minimum standard (if applicable)	Amendments to the existing MAP rules	
	<p>► Prior to the Amended MAP Rules the Indian CA had a limited role in the administrative/procedural aspects of a MAP case once the MAP resolution was reached. The Amended MAP Rules place more responsibility on the Indian CA in the resolution implementation phase of the MAP as summarized below.</p>	
	<p>Existing MAP rules (All of the below steps needed to be completed within 90 days from the date of receipt of communication by the prescribed authority)</p>	<p>Amended MAP rules (Procedural timelines depend on taxpayer's acceptance of MAP Resolution to the Indian CA)</p>
	<p>The Assessing Officer (AO) shall send communication of MAP resolution to taxpayer.</p>	<p>The Indian CA shall send communication to taxpayer.</p>
	<p>Taxpayer shall communicate the acceptance/rejection of MAP resolution to the AO along with confirmation on withdrawal of appeals if any.</p>	<p>Taxpayer shall communicate its acceptance/rejection of MAP to the Indian CA along with confirmation on withdrawal of appeals, if any, within 30 days from receipt of the MAP resolution.</p>
	<p>Not applicable.</p>	<p>The Indian CA shall then communicate the MAP resolution and the taxpayer's acceptance thereof to the prescribed authority who in turn shall forward it to the AO.</p>
	<p>Taxpayer shall pay taxes as due and furnish proof of payment to the AO.</p>	<p>The AO will give effect to the MAP resolution and inform the taxpayer on any tax demand/refund within one month from the end of the month in which the communication was received by AO.</p>
	<p>Taxpayer shall pay taxes as due and furnish proof of payment to the AO.</p>	<p>Taxpayer shall pay taxes as due and furnish proof of payment to the AO. The AO shall then proceed to withdraw the pending appeal filed by Indian tax authorities, if any, pertaining to subject matter of the MAP resolution.</p>
	<p>The AO is not required to send a copy of the order giving effect to the MAP resolution to the Indian CA.</p>	<p>The AO shall send a copy of the order giving effect to the MAP resolution to the Indian CA.</p>

Implications

Many United States-India MAP cases have been filed in the last few years because of the improvement in the relationship between the Internal Revenue Service and the CBDT. The OECD Peer Review Report underscored the importance of tax certainty, especially with regard to cross-border transactions. The Amended MAP Rules are a step in the right direction in terms of providing clarity. In view of the considerable amount of MAP cases being delayed, it seems that the Indian CA would benefit from additional resources. India's commitment to the MAP process highlights a positive future path given the uncertainty and risk of double taxation faced by multinationals investing in India.

Endnotes

1. <http://www.oecd.org/tax/beps/making-dispute-resolution-more-effective-map-peer-review-report-india-stage-1-c66636e8-en.htm>.
2. See EY Global Tax Alert, [OECD releases India Stage 1 peer review report on BEPS Action 14](#), dated 6 November 2019.

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