

Saudi Arabia issues taxpayer guidance for MAP

EY Tax News Update: Global Edition

EY's Tax News Update: Global Edition is a free, personalized email subscription service that allows you to receive EY Global Tax Alerts, newsletters, events, and thought leadership published across all areas of tax. Access more information about the tool and registration [here](#).

Also available is our [EY Global Tax Alert Library](#) on ey.com.

Executive summary

On 9 June 2020, Saudi Arabia's General Authority of Zakat and Tax (GAZT) published on its website the *Request for Mutual Agreement Procedure - Taxpayer guidance* (MAP Guidance) in both Arabic and English. Taxpayers in Saudi Arabia¹ may choose to initiate MAP requests to relieve double taxation or resolve treaty-based tax disputes in a timely manner.

The MAP Guidance was issued to facilitate access to the MAP and includes information on how a MAP request should be initiated, to whom it should be presented and what information should be included in the request. This is in line with Saudi Arabia's commitment to the Base Erosion and Profit Shifting (BEPS) Action 14 minimum standard as a member of the BEPS Inclusive Framework (BEPS IF).

The publication of the MAP Guidance is a significant step towards an effective and timely MAP process by providing direction with respect to the access and use of MAP in Saudi Arabia. Overall, it should serve to increase taxpayer confidence and certainty.

Detailed discussion

Background

On 5 October 2015, the Organisation for Economic Co-operation and Development (OECD) released its final report on improving the effectiveness of dispute resolution mechanisms (Action 14) under its BEPS Action Plan. This report was released in a package that included final reports on all 15 BEPS Actions.

The Action 14 report, *Making Dispute Resolution Mechanisms More Effective* (the Final Report), presents a commitment by countries to implement a so-called “minimum standard” on dispute resolution, according to the OECD. Minimum standards are the BEPS recommendations that all members of the BEPS IF have committed to implement and all members are subject to peer review processes.

The Final Report clarifies that its publication means that the G20 and OECD countries participating in the BEPS project have agreed to implement three overarching principles. These represent a minimum standard with respect to the MAP process by incorporating such principles into domestic law and/or their treaty interpretation/application. The minimum standard principles include:

- ▶ Implementation by countries of Article 25 of the OECD Model Tax Convention in good faith
- ▶ Assuring that domestic administrative procedures do not block access to the MAP
- ▶ Allowing taxpayers access to the MAP process when the requirements for taxpayers are met

As a member of the BEPS IF and the G20, Saudi Arabia is working closely with other jurisdictions to monitor the implementation of the minimum standard on dispute resolution under the BEPS Action Plan. This will complement the other BEPS minimum standards and facilitate taxpayers’ access to effective and expedient dispute resolution mechanisms under bilateral tax treaties.

MAP Guidance

The issuance of the MAP Guidance is aligned with the minimum standard principle, aiming to avoid domestic procedures blocking access to the MAP process. The discussions on Action 14 identified several different obstacles to dispute resolution through the MAP process. Saudi Arabia, as a minimum standard adopter, is required to take steps to counter those obstacles and allow for efficient dispute resolution through the use of MAP that includes

the publication of rules, guidelines and procedures on how to access and use the MAP process and take appropriate measures to ensure this information is available to taxpayers.

The published MAP Guidance contains the following:

- ▶ **Description of MAP** - This section explains what MAP is and what it is designed for. It provides for cases where a taxpayer can file for MAP relief when the actions of Saudi Arabia and/or the other State result or will result in taxation not in accordance with the provision of the relevant tax treaty.

A MAP may be requested by a taxpayer, for example, in cases where: (i) the taxpayer is not in agreement with the tax authorities regarding the existence of a permanent establishment (PE) or with the characterization of certain items of income for the purposes of the application of the tax treaty; (ii) transfer pricing adjustments between associated enterprises of different States have occurred or will occur; (iii) adjustment of profits attributable to a PE situated in a State of an enterprise of the other State has occurred or will occur; among others, to relieve double taxation and/or resolve treaty-related tax disputes and issues in interpreting or applying a tax treaty.

- ▶ **Conditions for requesting a MAP** - This section explains when a taxpayer may initiate a MAP request, including who can request a MAP, the role of the taxpayer and the timeframe within which a taxpayer can file a MAP request.

When applying for a MAP, the risk of taxation must be probable, and this can be demonstrated by certain actions of a State, such as the issuance of a: (i) notice of assessment; (ii) statement of audit position; or (iii) certification of withholding. The person resident of Saudi Arabia or of another State (depending on the wording of the MAP Article in the tax treaty) may initiate a MAP within three years (subject to the provisions of the tax treaty) of receiving the first notification of an action that the person considers as resulting in or will result in taxation not in accordance with a tax treaty.

- ▶ **How to request a MAP** - This section elaborates the process to initiate a MAP request, particularly to whom it should be filed and the information and documentation required to be submitted with the MAP request. The interaction between the domestic dispute resolution process and the MAP process is also outlined.

The MAP request must be submitted by the taxpayer to the GAZT’s MAP Competent Authority within the required period. The GAZT requires the taxpayer to submit certain

information to help it determine if the case is justified. Such information and documentation include: (i) the identity and contact details of the taxpayers involved in the request; (ii) the basis of the request, particularly the relevant tax treaty articles; (iii) relevant income years or amounts involved and the basis of the calculation; (iv) analysis of the issue(s) requested to be resolved, including arguments to support the taxpayer's claim along with supporting documentation; (v) a statement whether the issues involved in the MAP have been previously dealt with, for example, in a ruling, settlement agreement, tribunal or court decision, including copies of any such ruling, agreement or decision; and (vi) a statement confirming that all information and documentation provided in the MAP request is accurate and that the taxpayer will provide any other information or documentation requested by the specified dates.

In Saudi Arabia, a MAP process can be initiated simultaneously alongside domestic remedies available to the taxpayer. However, if the MAP is initiated by the taxpayer, the domestic recourse will be suspended until the determination of the MAP.

- ▶ **Timeframes for resolving a MAP case** - This section provides the timeframe within which MAP cases should be resolved as well as the implementation of any MAP outcome.

In general, MAP cases should be resolved within two years, depending on the complexity of the case. However, the GAZT has indicated that it will try to resolve cases as quickly as possible and will continue to communicate with the respective taxpayer on a timely basis. The GAZT will also aim to implement MAP agreements in due time.

- ▶ **MAP stages** - This section sets out the stages of the MAP process and the possible outcomes of Competent Authority mutual agreement. The confidentiality of MAP cases as well as the treatment of interest and penalties in MAP cases are also stated.

Stage one involves the submission of the MAP request to the GAZT, its determination as to whether the request is justified and if so, determination as to whether the GAZT can provide unilateral relief. If not, the case proceeds to Stage two where the GAZT negotiates with the Competent Authority of the other State and both will endeavor to resolve the taxpayer's case. Where there is an agreement reached by the Competent Authorities (Competent Authority Agreement or Agreement), the taxpayer will be informed, and the taxpayer will decide whether to accept the Agreement or not. If accepted, the taxpayer should withdraw any pending cases, judicial or administrative. If the taxpayer does not accept the Agreement, the taxpayer can seek tax relief via domestic remedies and the Competent Authorities will close the MAP case without an agreement.

It should be noted that the resolution or settlement of a taxpayer's MAP case does not constitute a binding precedent for Saudi Arabia and the other State.

Implications

In a post-BEPS world, multinational enterprises (MNEs) face significant pressure and scrutiny from tax authorities. This increased scrutiny is expected to increase the risk of double taxation and consequently, tax disputes. Due to the need for MNEs to be able to achieve higher levels of tax certainty in relation to cross-border transactions, it is expected that the number of MAP cases will continue to increase and accelerate. The publication of the MAP Guidance brings about transparency in how taxpayers can interact with the GAZT to seek its support in resolving cases of double taxation and tax treaty disputes.

Saudi Arabian taxpayers and investors are advised to carefully consider their multi-jurisdictional footprint as it concerns Saudi Arabia. Where cases such as the above are probable, they should consider the MAP as a means to resolution.

Endnote

1. In accordance with *BEPS Action 14 and the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS* (MLI), Saudi Arabia's tax treaties are/will be modified to allow a case to be presented to the authorities of either Contracting State. As such, non-Saudi Arabian tax residents may be able to submit MAP requests to GAZT to resolve tax disputes where a MAP is applicable. Where certain treaties are not modified to this effect, such tax treaty may be modified bilaterally.

For additional information with respect to this Alert, please contact the following:

Ernst & Young & Co (Public Accountants), Riyadh

- ▶ Asim J. Sheikh, *KSA Tax Leader* asim.sheikh@sa.ey.com
- ▶ Barry Magill barry.m@sa.ey.com
- ▶ Esraa Albuti esraa.albuti@sa.ey.com

Ernst & Young & Co (Public Accountants), Al-Khobar

- ▶ Syed Farhan Zubair farhan.zubair@sa.ey.com
- ▶ Ali K Khamis ali.k.khamis@sa.ey.com

Ernst & Young & Co (Public Accountants), Jeddah

- ▶ Hussain Asiri hussain.asiri@sa.ey.com
- ▶ Irfan Alladin irfan.alladin@sa.ey.com

Ernst & Young LLP (United States), Middle East Tax Desk, New York

- ▶ Asmaa Ali asmaa.ali1@ey.com

About EY

EY is a global leader in assurance, tax, transaction and advisory services. The insights and quality services we deliver help build trust and confidence in the capital markets and in economies the world over. We develop outstanding leaders who team to deliver on our promises to all of our stakeholders. In so doing, we play a critical role in building a better working world for our people, for our clients and for our communities.

EY refers to the global organization, and may refer to one or more, of the member firms of Ernst & Young Global Limited, each of which is a separate legal entity. Ernst & Young Global Limited, a UK company limited by guarantee, does not provide services to clients. For more information about our organization, please visit ey.com.

© 2020 EYGM Limited.
All Rights Reserved.

EYG no. 004183-20GbI

1508-1600216 NY
ED None

This material has been prepared for general informational purposes only and is not intended to be relied upon as accounting, tax, or other professional advice. Please refer to your advisors for specific advice.

ey.com