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UAE Tax Flash

Navigating international tax disputes in the UAE

The UAE Ministry of Finance has issued Mutual Agreement Procedure (MAP) Guidance to outline the process for resolving international tax disputes under the UAE's over 100 Double Tax Agreements (DTAs). MAP is particularly important for taxpayers engaged in cross-border activities, as it provides a structured approach to resolving international double taxation disputes. It serves as a mechanism to eliminate double taxation and ensure tax outcomes are consistent with international agreements, reinforcing the UAE's commitment to fair and treaty-compliant taxation.

We present a brief analysis of the UAE's MAP guidelines:

The legal framework of MAP

MAP is grounded in the provisions of DTAs, which are bilateral agreements between countries designed to prevent double taxation and fiscal evasion. These agreements allocate taxing rights and establish rules for cross-border taxation. The MAP clause is typically based on Article 25 of the OECD Model Tax Convention, which serves as a standard for many DTAs worldwide.

In recent years, the importance of MAP has been reinforced by international initiatives such as the OECD's Base Erosion and Profit Shifting (BEPS) project. The BEPS project aims to address tax avoidance strategies that exploit gaps and mismatches in tax rules. As part of this initiative, the OECD has developed measures to improve the effectiveness and efficiency of MAP, including the introduction of minimum standards for dispute resolution.

The UAE's Competent Authority (CA), usually the Minister of Finance or an authorized representative, is responsible for administrating the MAP requests. This authority operates independently of the Federal Tax Authority (FTA) and focuses on eliminating double taxation through negotiation and agreement.

When is MAP applicable?

MAP can be used when a taxpayer considers that the actions of one or both treaty states result in taxation not in accordance with the DTA. Common scenarios include:

- **Transfer pricing adjustments** with no corresponding deduction in the other state.
- **Dual tax residency** claims under both states' domestic laws.
- **Permanent establishment disputes**, with adjustments to permanent establishment or branch profits leading to double taxation in the other state.
- **Application of anti-abuse provisions**, leading to unintended double taxation.
- **Multilateral cases** involving more than two jurisdictions, often involving profit allocations under complex global transfer pricing models.

Note: Bona fide **self-initiated adjustments** (e.g. transfer pricing adjustments) may also be eligible if they cause double taxation and are supported by appropriate transfer pricing documentation.

Time limits and domestic legal interaction

- **Time limit:** The UAE DTAs incorporate provisions from the Model Tax Convention, which stipulate that a case must be presented within three years from the first notification of an action resulting in double taxation.
- **Proactive MAP claims:** In scenarios such as transfer pricing audits, where an adjustment is probable (e.g. if a similar tax assessment was raised in prior periods), taxpayers can submit a MAP claim as soon as they believe an adjustment is likely.
- **Simultaneous proceedings are not allowed:** Taxpayers cannot pursue MAP and UAE domestic litigation (Tax Disputes Resolution Committee or courts) at the same time.
- A taxpayer can:
  - File a MAP request to preserve their rights **before** the time-bar applies, but must **suspend litigation** until MAP concludes.
  - Withdraw from MAP to resume legal action or **accept** MAP results and withdraw legal remedies.

The MAP process

The MAP process begins when a taxpayer identifies a situation where taxation is not in accordance with a DTA. The taxpayer can then submit a request to the CA,[1] seeking a resolution. The CA reviews the request to determine its validity and whether it falls within the scope of the DTA.

Once a request is accepted, the CA engages in negotiations with the CA of the other country involved. The goal is to reach a mutual agreement that resolves the dispute and aligns with the provisions of the DTA. This process can involve complex discussions and may take several months or even years to conclude.

Key steps in the MAP process include:

1. **Eligibility assessment:** The CA assesses whether the taxpayer's request is eligible for MAP based on the DTA provisions and the nature of the dispute.

2. **Submission of information and MAP assessment:** The taxpayer submits the MAP claim within the timeline, providing a comprehensive package of documentation, including but not limited to details of the dispute, relevant DTA articles, the fiscal periods involved, a summary of the facts and an analysis of the issues. Transfer pricing documentation prepared in accordance with domestic transfer pricing legislation is required for transfer pricing cases. Based on the information provided, the CA may request further documentation before making an assessment on whether to accept the claim.

3. **Bilateral negotiations:** As a first step, the UAE CA will attempt to provide relief unilaterally. If this is not possible, the CAs of the countries involved will negotiate to reach a mutual agreement. This may involve multiple rounds of discussions and the exchange of proposals.

4. **Resolution and implementation:** If an agreement is reached between the CAs, the UAE CA will notify the taxpayer within two months of the conclusion. The taxpayer must accept or reject the outcome within one month. Accepted agreements are implemented by adjusting tax assessments in accordance with the resolution.
   If no agreement is reached, arbitration may be pursued where permitted; otherwise, the case is closed and domestic remedies remain available.

The UAE CA aims to resolve MAP claims within 24 months of acceptance if taxpayers respond to information requests within one month. Taxpayers may withdraw their MAP claim at any time by notifying the UAE CA, especially if a domestic remedy has been secured.

Conclusion

- The MAP serves as a fundamental mechanism for resolving international tax disputes, offering a structured and cooperative framework for addressing double taxation issues arising under DTAs.
- It provides taxpayers with enhanced confidence and clarity to manage the complexities around international taxation. Negotiations between CAs are likely to result in consistent outcomes on key international tax matters.
- The MAP program provides a more cost-efficient way to resolve disputes compared to litigation.
- To be best positioned to benefit from the MAP program, taxpayers should ensure that their TP documentation is prepared in line with the UAE transfer pricing regulations.

[1] This can be the UAE CA or the CA of the other contracting state under the more recent DTAs amended by the MLI. Where permissible under the DTA, taxpayers can submit the claim to the CAs of both entities, whereas older DTAs require the submission of the claim in the jurisdiction where they taxpayer is a tax resident.

Contact us

Antonio Tapia
Partner, Transfer pricing
antoniotapia@kpmg.com

Ramya Iyer
Director, Transfer pricing
riyer2@Kpmg.Com

Mike Uziak
Director, Transfer Pricing
muziak1@kpmg.com

Claire Boushell
Director, Transfer Pricing
cboushell@kpmg.com

Ankur Bhagat
Associate Director, Transfer pricing
abhagat2@kpmg.com

Barnak Jana
Associate Director, Transfer pricing
bjana1@kpmg.com

Aman Agrawal
Associate Director, Transfer pricing
aagrawal12@kpmg.com