



الهيئة العامة للزكاة والدخل  
General Authority of Zakat & Tax

# Request for Mutual Agreement Procedure – Taxpayer guidance

International Relations and Treaties Department

Strategy and Development Deputyship  
General Authority of Zakat and Tax

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## 1. Preface

The purpose of this document is to set out the process through which taxpayers can request assistance from the Competent Authority in the Kingdom of Saudi Arabia (hereafter “KSA”) to resolve disputes arising from taxation not in accordance with the provisions of the relevant double taxation agreement. In KSA, the Ministry of Finance has delegated this task to the General Authority of Zakat & Tax (hereafter “GAZT”).

According to the provisions set forth by double tax treaties signed by KSA and relating to resolution of difficulties arising where the actions of one or both of the Contracting States result or will result, for the taxpayer, in taxation not in accordance with the provisions of the convention, GAZT will endeavor to resolve such cases by mutual agreement with the Competent Authority of the other Contracting State. In such a case, the taxpayer may request assistance from GAZT to resolve the issue.

## 2. Description of the Mutual Agreement Procedure

Tax Conventions to Avoid Double taxation and the provisions they contain, such as the Mutual Agreement Procedure (“MAP”), help stimulate the economy and its growth.

MAP is designed to:

- relieve double taxation, typically arising from transfer pricing cases;
- resolve treaty-related tax disputes and issues in interpreting or applying a tax treaty.

MAP provides a bilateral mechanism for GAZT to engage with the competent authority of another Contracting State.

The taxpayer may request a MAP if he believes he is being taxed, or will be taxed, not in accordance with a tax treaty. Once the taxpayer lodges his request, he does not take part in MAP negotiations. The competent authorities negotiate to resolve his request. They can also try to relieve double taxation in cases not covered by the tax treaty.

A MAP can be requested where a person covered by a double tax treaty considers that the actions of KSA and/or of the other State result or will result in taxation not in accordance with the provisions of such double tax treaty, for example in cases where:

- The taxpayer is deemed to be a resident of both States or where there is no agreement on the State of residence;
- The taxpayer disagrees with the tax authorities on the existence of a permanent establishment or on the characterization of certain items of income for the purposes of the application of the double tax treaty;
- The taxpayer disagrees with the tax authorities on the interpretation and application of provisions or principles of the double tax treaty;
- Transfer pricing adjustments between associated enterprises of different States, has occurred or will occur;
- Adjustments of profits attributable to a permanent establishment situated in a State of an enterprise of the other State have occurred or will occur;
- The taxpayer disagrees with the tax authorities that have made an adjustment as to whether the application of a domestic law anti-abuse provision is in conflict with the provisions of a double tax treaty.

## 2.1 Double taxation

In most instances, MAP cases involve cross-border double taxation. This can happen when the domestic taxation provisions of two Contracting States overlap. Double taxation can be juridical (where the taxpayer is taxed in two Contracting States on the same income, profits or gains) or economic (where the taxpayer and another taxpayer are taxed on the same income, profits or gains in different Contracting States).

In the present context, juridical double taxation may arise if:

- Each Contracting State subjects the same taxpayer to tax on their world-wide income;
- A resident of one Contracting State derives income in the other Contracting State and both Contracting States impose tax on that income or part of that income.

## 2.2 Relief from double taxation

### 2.2.1 Relieving juridical double taxation

KSA's tax treaties provide mechanisms to relieve juridical double taxation including:

- An exemption for foreign source income or a foreign income tax offset under domestic law, or
- Credits (in the form of foreign income tax offsets domestically) or reductions for foreign tax paid being allowed against KSA's tax payable under the relevant treaty.

All KSA's tax treaties contain an article that eliminates double taxation by obliging the country of residence to provide relief from juridical double taxation.

### 2.2.2 Relieving economic double taxation

Economic double taxation can arise when a Contracting State makes a primary transfer pricing adjustment consistent with the associated enterprises article in KSA's tax treaties.

The other Contracting State may then be required to make an appropriate adjustment to the amount of tax charged on the profits of the associated enterprise in that Contracting State in order to relieve economic double taxation (a correlative adjustment). A correlative adjustment may not resolve all double taxation.

Standard practice is that competent authorities of both Contracting States will consult with each other.

## 2.3 Taxes included in a tax treaty

The 'taxes covered' article outlines the taxes that a particular tax treaty covers. For KSA, this may include:

- Income tax
- Zakat

Penalties and interest on such taxes are excluded.

### 3. Conditions for requesting a MAP

The taxpayer may request a MAP when he considers the actions of one or both Contracting States results, or will result, in taxation not in accordance with a tax treaty. The risk of such taxation must be probable (not merely possible). This can arise from a variety of actions by a contracting state, including:

- a notice of assessment or amended assessment;
- a statement of audit position; or
- a certificate of withholding.

In addition, the taxpayer may request MAP when he has initiated an adjustment in good faith.

A self-initiated adjustment is considered to be made in good faith if:

- it reflects a good faith effort on the taxpayer's part to ensure that he is reporting his income or profits accurately;
- the taxpayer has fulfilled properly and in a timely manner all his taxation obligations related to the income or profits under the domestic tax laws of both Contracting States.

#### 3.1 Who can request a MAP

Any person that is a resident of KSA, or of another country (depending of the wording in the MAP article of the relevant tax treaty) as defined in the double tax treaty which applies to the case, and that considers that the actions of KSA and/or of the other Contracting State lead or may lead for him in taxation not in accordance with the provisions of such double tax treaty, may irrespective of the remedies provided by KSA's legislation or the domestic law of the other Contracting State, present his case to GAZT.

In cases where an adjustment is made that affects associated enterprises resident in different Contracting States, it is advisable that each of those enterprises submits a request for initiating a MAP to the competent authority of the State of which it is a resident.

#### 3.2 Role of the taxpayer

While the taxpayer initiates the MAP process by making a request to a competent authority and KSA advises the taxpayer of progress, the taxpayer is not permitted to attend MAP negotiations. The taxpayer may present arguments in support of his case to both competent authorities if they both agree to it. If they do not agree, KSA will give the taxpayer an opportunity to present his arguments to GAZT.

#### 3.3 Time limit for requesting MAP

Most of KSA's tax treaties require the taxpayer to request his case be reviewed in a MAP within three years <sup>1</sup> of him receiving the first notification of an action that he considers to subject him, or likely to subject him, to tax not in accordance with a treaty (i.e. the time limit for submitting a MAP request will usually starts from the first notification of the action which gives rise to taxation not in accordance with the Convention). However, the time limit is two years pursuant to the treaty concluded with Syria . <sup>2</sup>

KSA cannot accept a taxpayer's MAP request after the time limit expires.

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<sup>1</sup> Subject to the provisions of the applicable double tax treaty or the Multilateral Instrument (MLI)

<sup>2</sup> The treaty concluded between KSA and Syria will not be amended by the MLI, unlike the treaties concluded by KSA with France, Italy, Russia and the United-Kingdom, that also include a two-year time limit for requesting a MAP.

### 3.4 Multi-year resolution

GAZT will permit, in certain cases and after an initial tax assessment, requests for multi-year resolution through the MAP of recurring issues with respect to filed tax years, where the relevant facts and circumstances are the same and subject to the verification of such facts and circumstances on audit. Such procedures would remain subject to the time limit requirements above-mentioned.

## 4. How to request a MAP

The taxpayer must submit his request for MAP to the GAZT's MAP Competent Authority within the period required. The request to initiate a MAP is not subject to essential formalities apart from those mentioned in this section. The request must be dated and signed by the person that submits it, or by a duly authorized representative.

The relevant competent authority may be the competent authority of the taxpayer's country of residence or the competent authority of either country, depending on the wording in the MAP article of the relevant tax treaty.

For GAZT to be able to accept the taxpayer's MAP request, it must contain sufficient information for GAZT to determine if the case is justified.

The taxpayer must provide the following information and documentation as part of his request:

- The identity and contact details of the taxpayers covered in the request including
  - o name
  - o address
  - o taxpayer's identification number or date and place of birth (for individuals)
  - o contact details
  - o where applicable, the relationship between the taxpayers covered in the request
- basis for the request, specifying the articles of the relevant treaty that the taxpayer considers that one or both Contracting States are not applying correctly and the Contracting State that is not applying the treaty.
- all relevant facts of the case and any documentation supporting those facts, including
  - o income years or other periods
  - o amounts involved with details of what is to be adjusted and the basis of the calculation
- analysis of the issues the taxpayer wants resolved under the MAP, including how he thinks the specific treaty provisions should be interpreted to support his claim that one or both Contracting States have not applied the treaty correctly. The taxpayer should support his analysis with relevant documentation, such as:
  - o transfer pricing documentation required under legislation or in accordance with published guidance
  - o copies of tax assessments, audit or other tax administration documentation reflecting what he considers to be the incorrect application of the relevant treaty provisions
  - o copies of briefs or objections submitted by the taxpayer in response to the tax administration's action
- whether the taxpayer has submitted the MAP request to the other Contracting State's competent authority; in case of a positive answer, please provide:
  - o the date the request was submitted
  - o the name and designation of the person, or the office, to which the MAP request was submitted
  - o a copy of the request including all documentation filed with it, unless the content of both MAP requests is identical

- whether the issues involved have been dealt with previously, for example, in a ruling, advance pricing arrangement, settlement agreement, or tribunal or court decision. In case of a positive answer the taxpayer should provide a copy of any such ruling, agreement or decision
- a statement confirming 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.

If a related taxpayer submits a MAP request to another competent authority regarding taxation not in accordance with a treaty involving KSA, the taxpayer should also provide a copy of the MAP request to GAZT. This helps GAZT to do preliminary analysis – potentially reducing the time taken to resolve the MAP. Where the documents attached to the request are very large, a summary thereof should be submitted, whenever possible.

**Note:** GAZT may reject the taxpayer's request if he does not provide the information and documentation listed above.

If the request does not contain all the necessary information, or if GAZT needs additional information to assess the validity of the request, a request for additional information will generally be sent to the taxpayer.

The requested information must be provided to GAZT within 30 days in accordance with the procedures described in the request. If the information is not provided within the requested time, the processing of the MAP request could be delayed. Failure to provide the information could also lead to the case being closed without further action.

Moreover, the person that submits the request must:

- Respond as completely and quickly as possible to all reasonable and appropriate requests made by GAZT and have all relevant documentation at the disposal of GAZT;
- Send to GAZT as quickly as possible any changes to the information submitted, any new information, or any new documentation issued by, or submitted to, the competent authorities of the other States, concerning the case.

## 4.1 Domestic dispute resolution and MAP process

MAP provides an additional dispute resolution process to those available under the domestic legislation of KSA and other Contracting States.

### 4.1.1 Objections to an assessment

In case of an Assessment, the Taxpayer can submit an Objection to the competent department. After receiving the Objection, an internal review process will start within GAZT. This review process will either result in:

- accepting the Objection in full: a re-assessment will be issued by the Authority;
- objection is partly accepted: a re-assessment will be issued by the Authority to the extent applicable;
- objection is rejected in full: a notification of rejection will be sent to the Taxable person with regards to its objection on the Authority's prior decision.

If this Objection is rejected or only partially accepted, the taxpayer can either:

- attempt an administrative appeal by requesting the involvement of the Settlement Committee to resolve the dispute; or
- submit a judicial appeal to the Preliminary Objection Committee.

### 4.1.2 Settlement committee

The Settlement Committee can provide dispute resolution as an alternative to formal Appeal made to the Tax Violations and Disputes Resolution Committees which are considered as the competent judicial authorities to look into the Tax disputes.

### 4.1.3 Judicial appeal <sup>3</sup>

The KSA Law has determined that the Tax Violations and Disputes Resolution Committees to be the competent judicial authorities to which the Taxpayers may file a grievance (appeal) against the Authority's decisions.

### 4.1.4 Relation between MAPs and domestic remedies

Within KSA, a MAP process can be initiated simultaneously alongside domestic recourse. However, if a MAP request is made by the taxpayer, the domestic recourse/appeal will therefore be temporarily frozen until the determination of the MAP.

### 4.1.5 Court or tribunal decisions

Moreover, once the decision issued on the taxpayer's issue is judicial and final, GAZT will abide by that decision or order. In this situation, GAZT shall inform the other competent authority of the final judicial decision and its abidance by it and that the other CA should attempt to resolve any remaining issues of the taxpayer.

## 5. Timeframes for resolving a MAP case

MAP cases should be resolved within 2 years, depending on the complexity of the taxpayer's case. However, GAZT will try to resolve the taxpayer's case as quickly as possible. In the meantime, GAZT will communicate with the taxpayer and with the other Contracting State on a timely basis and keep the taxpayer informed of the progress of his case.

### 5.1 Time limits on implementing the MAP outcome

Almost all of KSA's tax treaties state that any MAP agreement will be implemented despite any domestic time limits.

Some tax treaties also include a specific time limit. This is the case of the treaties concluded by KSA with Mexico, Switzerland and the United-Kingdom . <sup>4</sup>

GAZT will work with the competent authorities of its treaty partners to ensure that all MAP agreements are implemented in due time.

<sup>3</sup> Web site of the General Secretariat of Tax Committee: [www.gstc.gov.sa](http://www.gstc.gov.sa)

<sup>4</sup> The treaties conclude between KSA and Mexico, Switzerland and the United-Kingdom will not be amended by the MLI, unlike the one with Turkey.



## 6. MAP stages

### 6.1 Stage one

The first stage in the MAP process has three steps:

- 1. The taxpayer submits his request to GAZT
- 2. GAZT considers whether his request is justified
- 3. If the request is justified, GAZT will determine if it can provide unilateral relief.

#### 6.1.1 Step 1: Submitting the taxpayer's request

When GAZT receives the taxpayer's completed MAP request, GAZT will confirm whether the taxpayer submitted it in time and to the correct competent authority.

GAZT will not accept a MAP request received out of time as there is no mechanism in KSA's tax treaties for the competent authority to extend the time allowed to submit a MAP request.

#### 6.1.2 Step 2: Determining if the taxpayer's case is justified

A competent authority will determine the taxpayer's case is justified if:

- he has provided a sufficient factual and legal basis for his case
- his MAP request demonstrates that:
  - o the actions forming the basis of the request results or will result for him in taxation not in accordance with a tax treaty
  - o the risk of such taxation is at least probable, not just possible.

GAZT will accept that the risk of taxation not in accordance with a treaty is probable if the taxpayer has received written notification from GAZT or the tax administration of a treaty partner country of an actual or proposed action. The notification should include details of what is to be adjusted, the amounts and the basis of calculation.

After GAZT has determined the MAP request is justified, it will let the taxpayer know his case has been accepted and placed into GAZT's MAP program.

Actions that do not justify a MAP request include:

- an audit or examination of the taxpayer's affairs or those of an associated foreign entity prior to the issue of a statement of audit position or equivalent position paper from another Contracting State;
- exchange of information requests about dealings between the taxpayer and an associated foreign entity;
- discussions between the taxpayer (or an associated foreign entity) and GAZT (or a foreign tax Contracting State) about the taxpayer's tax affairs;
- public advice and guidance of a general nature, even if the taxpayer believes it could apply to him and, if applied, may result in taxation not in accordance with the treaty.

If GAZT considers that the taxpayer's case is not justified, then GAZT will advise the taxpayer that GAZT will take no further action in relation to the taxpayer's request.

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### 6.1.3 Step 3: Unilateral relief

GAZT will decide whether it can reach an appropriate solution itself. If this is not possible, such as when the taxation not in accordance with the tax treaty is due wholly or in part to an action taken in the other contracting state, GAZT will try to resolve the taxpayer's case by mutual agreement with the competent authority of that Contracting State (stage two).

## 6.2 Stage two

In this stage, GAZT negotiates with the competent authority of the other Contracting State. Both competent authorities will do their best to resolve the taxpayer's case. However, this does not mean that the competent authorities will resolve every case or necessarily relieve all taxation not in line with the treaty.

In all instances and as part of the negotiations, the competent authorities will seek to establish a mutual understanding of the relevant principles embodied in the treaty, the facts of the taxpayer's case and how those principles are to be applied so as to relieve any taxation not in accordance with the treaty.

For example, if GAZT makes the primary transfer pricing or profit reallocation adjustment, GAZT will try to demonstrate to the other competent authority that:

- the adjustment results in tax in accordance with the treaty
- the treaty partner country should relieve any resultant double tax.

GAZT will also seek to comprehend fully the other competent authority's position and explore opportunities to reach agreement.

However, if no agreement is reached, the issues preventing the resolution of the case won't be submitted to arbitration since there are no provisions for arbitration in all Saudi Arabia's tax treaties.

### 6.2.1 How competent authorities communicate with each other

Competent authorities usually provide their positions to each other by exchanging position papers. If the competent authorities do not reach agreement after exchanging MAP position papers, they may discuss the matter with each other directly.

In preparing GAZT's MAP position paper, GAZT may take into account relevant information the taxpayer provides (including information about the taxpayer's foreign associates) and information gained from any prior compliance activity.

## 6.3 Competent authority mutual agreement

Before reaching a final resolution of the case with the competent authorities of the other States, GAZT notifies the terms and conditions of the Agreement to the taxpayer, so that he can declare, within 30 days, whether he accepts them as a final resolution of the case.

The acceptance of the Agreement reached under a MAP obliges the taxpayer to withdraw any pending cases in the judicial or administrative instances.

If the taxpayer does not accept the terms and conditions of such Agreement within the time limit referred to in the preceding, GAZT shall send the competent authority of the other State a

proposal to close the MAP case without agreement. In this case, the taxpayer can seek tax relief under domestic objection, review and appeal rights. In this case, the competent authorities will finalize the taxpayer's MAP case without implementing the agreement reached.

After the acceptance of the Agreement reached under a MAP by the taxpayer, GAZT confirms the Agreement, in writing, with the competent authority of the other State.

An appropriate solution arrived at by both competent authorities may result in GAZT:

- restoring the taxpayer's original tax position by withdrawing the adjustment which led to his MAP request;
- making a correlative adjustment or providing a tax offset or credit to relieve any double taxation;
- amending the taxpayer's tax assessment or tax payable if he agrees with the MAP outcome.

The taxpayer may proceed with his domestic objection, review or appeal rights in relation to the assessment (or amended assessment) arising from issues that are outside the scope of the MAP or otherwise left unresolved.

Please note that the taxpayer's MAP settlement does not constitute a binding precedent for KSA and the other Contracting State. Indeed, this agreement only results from the positions taken by GAZT and the competent authority of the other Contracting State for the taxpayer's sole case which derives from a unique fact pattern. Thus, one taxpayer's MAP settlement cannot be applied to similar situations.

## **6.4 Confidentiality of MAP Cases**

MAP cases are confidential and any information received under this process is subject to strict confidentiality requirements.

## **6.5 Penalties and interest (delay fine) under MAP**

MAP does not cover penalties resulting from adjustments that have resulted in double taxation.

However, when a unilateral decision by the CA is issued or an agreement between the two CAs is reached under the MAP, the penalties associated with the amendment provided for in the decision or mutual agreement will be subject to the conditions applicable to penalties in similar circumstances according to domestic laws in the Kingdom.

## **6.6 Collection of taxes under MAP**

Collection of taxes will be suspended during the period a MAP case is pending under the same conditions as in domestic administrative or judicial remedy.

