

What's New

Tax Insights



14 June 2022

CBDT releases updated MAP guidance

In brief

The Central Board of Direct Taxes (CBDT), in August 2020, had issued a detailed guidance on the mutual agreement procedure (MAP) and related matters for the benefit of taxpayers, tax practitioners, tax authorities, and competent authorities (CAs) of both India and its double tax avoidance agreement (DTAA) partners. Subsequently, stakeholders had raised queries on certain related aspects of the MAP, which were not covered by existing guidance, and requested clarity on those issues. Considering all the inputs and suggestions for clarity, the CBDT has released an updated guidance in relation to MAP (updated MAP guidance).

In detail

New aspects covered in the updated MAP guidance

Access to MAP in case of the VsV scheme

Vivad se Vishwas (VsV) applications are settlements and are to be considered final irrespective of any other law or agreement. India's view was that this includes MAP proceedings that arise from DTAA's; thus, access to MAP would be denied. However, the Organisation for Economic Co-operation and Development's (OECD) Base Erosion and Profit Shifting (BEPS) Action 14 Stage 2 Peer Review Report noted that India's position of denying MAP access to matters covered in The Direct Tax Vivad se Vishwas Act, 2020 (VsV Act), prevents correlative relief in a DTAA partner state. Accordingly, this position was concluded to not be in line with the requirements of Action 14. A recommendation was provided to ensure that taxpayers have access to MAP in cases where disputes are settled under the VsV Act. Updating of the MAP guidance in this regard was also suggested.

CBDT in the updated MAP guidance has clarified the interplay between MAP and the VsV scheme. CBDT has stated that where an Indian resident taxpayer opts for the VsV scheme to settle a transfer-pricing dispute, and the tax authorities of India accept the same, the CAs of the other countries or specified territories may accept MAP applications from their taxpayers (which are associated enterprises of the Indian taxpayer) and notify the CAs of India. The CAs of India would then allow access to MAP but shall not deviate from the result arrived under the VsV. Instead, they would request the CAs of the DTAA partners to provide correlative relief.

However, CBDT has clarified that the CAs of India shall not provide access to MAP to a non-resident taxpayer that has itself opted for the VsV scheme on the same issue, because this applicant has given up its legal right to access MAP under the provisions of the VsV Act.

Responsibility of the MAP applicant to make true and complete disclosure

The updated MAP guidance explains that MAP operates on trust and good faith among CAs and taxpayers. Unlike normal audit scrutiny or appeal proceedings, CAs resolve the MAP in most cases through discussions based on documents the taxpayer has submitted. To this effect, CBDT has added a new Part E in the updated MAP guidance to highlight the MAP applicants' responsibilities.

Responsibility of making true disclosure

CBDT has highlighted that certain instances have come to the CAs' notice wherein taxpayers have suppressed information — e.g. invoked MAP in respect of adjustments that one DTAA partner has made without mentioning that the other DTAA partner has also made adjustments on the same transaction. In such a case, CAs of the two countries can be blindsided in negotiations if the applicant only mentions adjustments in one jurisdiction and leaves out the crucial fact of adjustments in the other jurisdiction.

Accordingly, CBDT has stated in the updated MAP guidance that an Indian resident taxpayer making a MAP application in item (k) of Form 34F should provide all the facts of the case that can materially affect the negotiation process.

Responsibility to provide up-to-date information

CBDT has also highlighted instances where taxpayers have not given the same set comparables to the CAs, particularly in cases where both bilateral advance pricing agreements and MAP are involved. CBDT has stated that the applicant must keep the CAs as up to date as possible on (1) all material changes in the information or documentation previously submitted as part of, or in connection with, a request, and (2) new information or documentation relevant to the issues under consideration. CBDT has stated that making all relevant documentation and information accessible to a CA, in good faith, will assist the smooth and efficient operation of the MAP process.

Moreover, CBDT has highlighted that while many of India's DTAA partners do not allow appeal and MAP proceedings to be pursued simultaneously, India follows a liberal regime where the taxpayer can choose to pursue both an appeal and MAP proceedings simultaneously. The updated MAP guidance states that in a case where the Income-tax Appellate Tribunal passes any order, the taxpayer must immediately notify the CAs so the MAP proceedings are closed forthwith, and any infructuous work is avoided. In such cases, it is open to the DTAA partner to provide relief from double taxation.

The takeaways

The updated MAP guidance is a welcome step since it clarifies issues, such as consequence of the VsV scheme on MAP, and implements the recommendations made by the OECD in the BEPS Action 14 Stage 2 Peer Review Report. Additionally, by elaborating on taxpayer's responsibilities during the MAP process, the updated MAP guidance will go a long way in managing the expectations of taxpayers that have already taken the MAP route. The updated MAP guidance further reinforces India's commitment to make dispute resolution an effective and efficient process.

There are, however, some matters the taxpayers would have liked to see in the updated MAP guidance or the Income-tax Rules, 1962 such as restricting mandatory collection of tax demand after a MAP is invoked, not extending an interest charge for the period starting from invoking a MAP to its resolution and not pursuing penalty proceedings for matters that have been covered in a MAP settlement. However, it seems that taxpayers will have to wait for clarification on such matters.

About PwC

At PwC, our purpose is to build trust in society and solve important problems. We're a network of firms in 156 countries with over 295,000 people who are committed to delivering quality in assurance, advisory and tax services. Find out more and tell us what matters to you by visiting us at www.pwc.com.

PwC refers to the PwC network and/or one or more of its member firms, each of which is a separate legal entity. Please see www.pwc.com/structure for further details.

© 2022 PwC. All rights reserved.

Follow us on

[Facebook](#), [LinkedIn](#), [Twitter](#) and [YouTube](#).

pwc.in

In this document, "PwC" refers to PricewaterhouseCoopers Private Limited (a limited liability company in India having Corporate Identity Number or CIN : U74140WB1983PTC036093), which is a member firm of PricewaterhouseCoopers International Limited (PwCIL), each member firm of which is a separate legal entity.

©2022 PricewaterhouseCoopers Private Limited. All rights reserved.