

TAX FLASH NEWS

16 June 2022

CBDT releases updated guidance on Mutual Agreement Procedure (MAP)

The Central Board of Direct Taxes (CBDT) had issued guidance on the MAP procedure¹ and matters connected thereto. Further, to provide clarity on the consequences of the Vivad se Vishwas Scheme (VsV) on MAP application, the CBDT has updated the MAP guidance. Further, in the guidance, the CBDT has added a new part on the responsibility of MAP applicant to make true and complete disclosure.

MAP and Vivad se Vishwas Scheme

Where a resident taxpayer opted for Vivad se Vishwas Scheme (VsV Scheme) for settlement of a case which involves the resolution of transfer pricing adjustments on international transactions with its Associated Enterprises (AEs), and the same is accepted by the tax authorities of India, the Competent Authority (CA) of the other country or specified territory may accept MAP application from their taxpayer (which are AEs of the Indian taxpayer) and notify the CA of India. The Indian CA would allow access to MAP but shall not deviate from the result arrived under the VsV. Instead, they would request the CA of the treaty partners to provide correlative relief.

Further, the CA of India shall not provide access to MAP to a non-resident taxpayer which has itself opted for the VsV scheme on the same issue because the applicant has given up its legal right to access MAP under VsV².

Responsibility of MAP applicant to make true and complete disclosure

The CBDT has noticed that in most cases, MAP is resolved by CAs through discussions based on

documents submitted by the taxpayer. However, recently a couple of cases of suppression of information (invoking MAP in respect of adjustments made by one treaty partner without mentioning the fact that adjustment has also been made by the other treaty partner on the same transaction) and not giving the same set of comparable to the CAs particularly in cases where both Bilateral Advance Pricing Arrangements (BAPA) and MAP are involved have come to its notice.

Further, in the earlier MAP guidance it was clarified that where the Income-tax Appellate Tribunal (ITAT) has passed a final order, the CAs of India shall not deviate from such order and MAP in such cases shall be closed as resolved under domestic remedy. Therefore, if in a case the ITAT passes any order, the taxpayer must immediately notify the CAs that MAP proceedings are closed forthwith, and any infructuous work is avoided.

In view of the above, a new Part E is added to the MAP guidance to highlight MAP applicants' responsibilities, as follows:

Responsibility of making true disclosure

The applicant should provide all the facts of the case that can materially affect the negotiation process. For instance, if adjustments have been made to the same international transaction by Indian tax authorities as well as its treaty partner's tax authorities, the applicant should mention adjustments in both jurisdictions.

Responsibility to provide up-to-date information

The applicant should keep the CAs updated on all material changes in the information or documentation previously submitted and any new information or documentation relevant to the issues under consideration. Also, the applicant should promptly provide updated status of tax proceedings in other fora that could affect the MAP process.

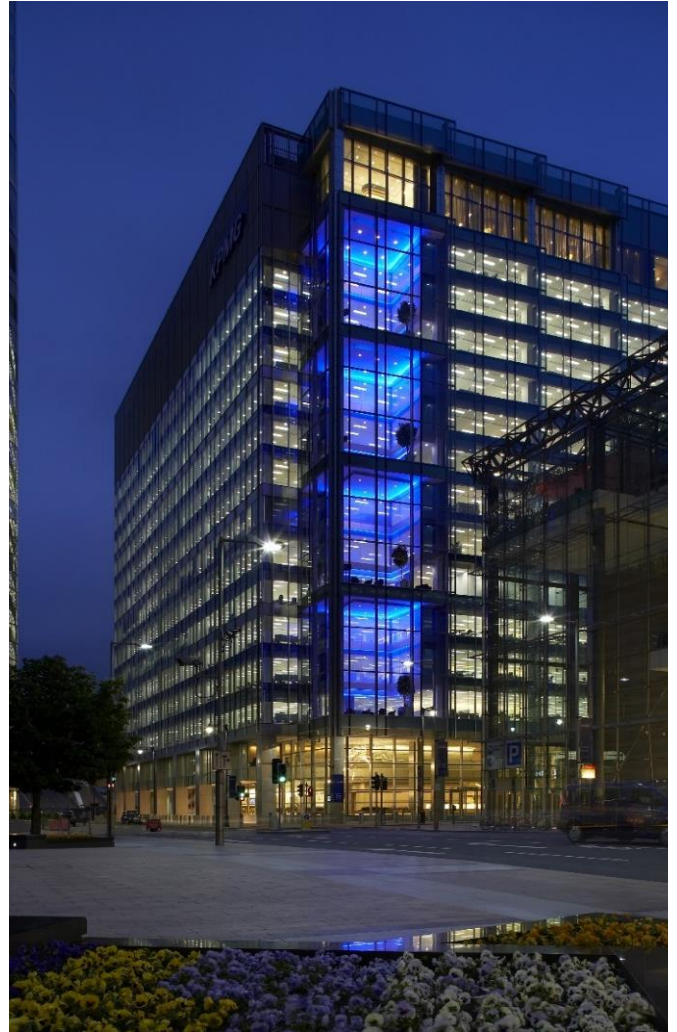
¹ F. No. 500/09/2016-APA-I, dated 7 August 2020

² In accordance with Section 5(3) of the VsV Act

Making all relevant documentation and information accessible to CA will assist in the smooth and efficient operation of the MAP process.

Our comments

The MAP peer review report on India (Stage 2) issued by the OECD, under BEPS Action 14, recommended that India should ensure that taxpayers have access to MAP in cases where a taxpayer settles a dispute under the VsV Act, 2020. The updated guidance allowing MAP applications in case of VsV scheme is intended to meet this requirement. Also, guidance on taxpayer's responsibilities during the MAP process should help build the confidence of the CAs on the documents, basis which MAP is getting settled.



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