

TAX FLASH NEWS

9 May 2020

India amends Mutual Agreement Procedure Rules

The Mutual Agreement Procedure (MAP) is an option available to taxpayers to resolve disputes giving rise to double taxation whether juridical or economic in nature. The tax treaties give authorisation for assistance of Competent Authorities in the respective jurisdiction under MAP. The taxpayer of the country having to bear the incidence of double taxation can apply for assistance of Competent Authorities under MAP to resolve the issue of such double taxation.

Rule 44G of the Income-tax Rules, 1962 provides that where a resident taxpayer is aggrieved by any action of the tax authorities of any country outside India for the reason that, according to him, such action is not in accordance with the terms of agreement with such other country outside India, he may make an application to the Competent Authority in India seeking to invoke the MAP, in terms of Form No. 34F.

CBDT Notification

Recently, the Central Board of Direct Taxes (CBDT) has issued a Notification¹ amending Rule 44G with respect to the application and the procedure for MAP. It has also amended Form 34F for application to the Competent Authority for invoking MAP.

The procedure to invoke MAP is summarised as follows:

- Where the taxpayer, being a resident of India, is aggrieved by any action of the tax authorities of any country or specified territory outside India for the reason that, according to him, such action is not in accordance with the terms of agreement with such other country or specified territory, he may make an application to the Competent Authority in India seeking to invoke the MAP, if provided in such agreement, in Form No. 34F
- Where a reference has been received from the competent authority of any country or specified territory outside India under any agreement with that country or specified territory with regard to any action taken by any income-tax authority in India or by the tax authorities of such country or specified territory, the Competent Authority in India shall convey his acceptance or otherwise for taking up the reference under MAP to the competent authority of the other country or specified territory.
- The Competent Authority in India shall, with regard to the issues contained in Form No. 34F or in the reference from the competent authority of a country or specified territory outside India, call for the relevant records and additional document from the income-tax authorities or the taxpayer or his authorised representative in India, or have a discussion with such authorities or taxpayer or representative, to understand the actions taken by the income-tax authorities in India or outside that are not in accordance with the terms of the agreements between India and the other country or specified territory.
- The Competent Authority in India shall endeavour to arrive at a mutually agreeable resolution of the tax disputes, arising from such actions of the income-tax authorities, in accordance with the agreement between India and the other country or specified territory within an average time period of twenty-four months.
- In case the MAP is invoked on account of action taken by any income-tax authority in India, the resolution arrived above in a previous year shall not result in decreasing the income or increasing the loss, as the case may be, of the taxpayer in India, as declared by him in the return of income of the said year.

¹ Notification No. 23/2020, dated 6 May 2020

- If a resolution is arrived, the same shall be communicated to the taxpayer, who shall communicate his acceptance or non-acceptance within 30 days.
- The taxpayer's acceptance of the resolution shall be accompanied by proof of withdrawal of appeal, if any, pending on the issues that were the subject matter of the resolution arrived above.
- On receipt of acceptance, the Competent Authority in India shall communicate the resolution arrived at and the acceptance by the taxpayer along with the proof of withdrawal of appeal, submitted by the taxpayer to the Principal Chief Commissioner or the Chief Commissioner or the Principal Director General or Director General, as the case may be, who in turn shall forward it to the AO.
- On receipt of communication, the AO shall give effect to the resolution by an order in writing, within 1 month from the end of the month in which the communication was received by him and intimate the taxpayer about the tax payable determined by him.
- The taxpayer then, shall pay the tax as determined within the time allowed by the AO and shall submit the proof of payment of taxes to the AO. The AO shall then proceed to withdraw the pending appeal, if any, pertaining to the subject matter of the resolution.
- A copy of the order shall be sent to the Competent Authority in India and to the taxpayer.
- The amount of tax, interest or penalty already determined shall be adjusted in accordance with the resolution and in the manner provided under the Act or the rules made thereunder to the extent that such manner is not contrary to the resolution arrived at.

Revised Form 34F requires detail of remedy sought along with documentary evidence, if any, in addition to the taxpayer-specific information contained in the earlier form.

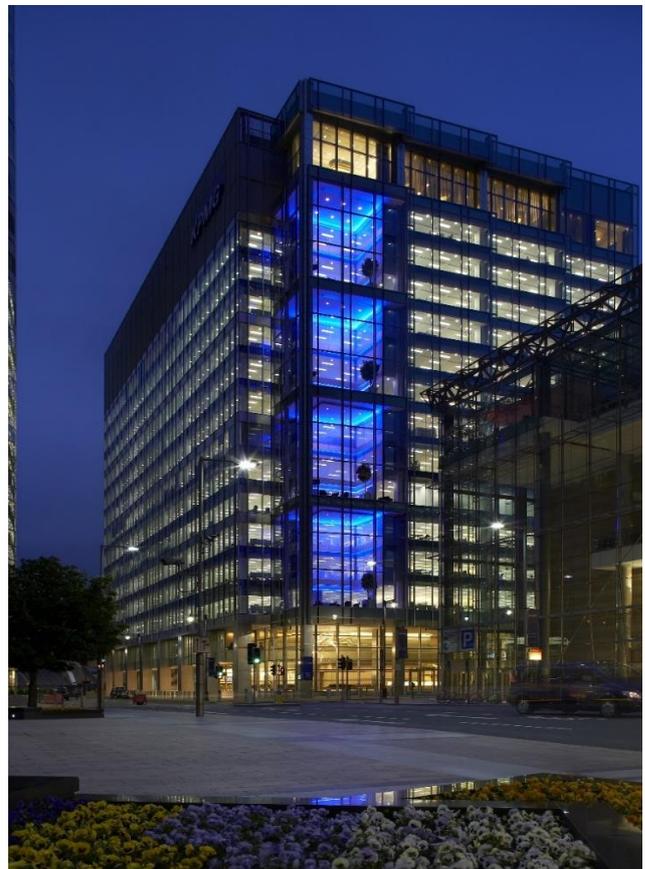
Our comments

There has been a significant dispute in the areas of international tax, such as taxation of royalty, existence of permanent establishment, attribution of profits, etc. The current mechanisms such as the Settlement Commission, Authority for Advance Rulings, Dispute Resolution Panel and Advance Pricing Agreement, are in the broader sense, forums for avoiding protracted litigation. However, most of these methods have not proved to be fully effective in expediting resolution of tax litigation for various reasons.

The Indian government is advocating the use of MAP for solving impending disputes. MAP provides for a complete and determinative one-time cost-effective alternative to multiple litigation process and such proceedings are binding on revenue authorities. Although MAP is binding for specific issues and years, its persuasive value continues for subsequent years.

In October 2019, OECD released sixth batch of peer review reports relating to BEPS minimum standard Action 14 - making dispute resolution mechanisms more effective. The report states that overall India meets almost half of the elements of the Action Plan 14 minimum standard. Where it has deficiencies, India is working to address several of them. In order to be fully compliant with all four key areas of an effective dispute resolution mechanism under the Action Plan 14 minimum standard, India needs to amend and update a certain number of its tax treaties.

In line with OECD suggestions, the amended Rules provide that the disputes under MAP can be resolved within an average time period of 24 months. These amendments would encourage taxpayers to adopt MAP route for speedy dispute resolution.



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