



# STATE TAX SERVICE UNDER THE MINISTRY OF ECONOMY OF THE REPUBLIC OF AZERBAIJAN

## **Guidelines on making requests in compliance with "Mutual Agreement Procedure" article of international treaties on elimination of double taxation between the Republic of Azerbaijan and other States**

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## 1. Introduction

This document deals with the determination of the processes for the review of requests for conducting the mutual agreement procedure in accordance with the international treaties for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and capital gains (hereinafter - the international treaty) signed and entered into force between the Republic of Azerbaijan and the relevant foreign state and arrangement of the procedure of agreement (hereinafter - the mutual agreement procedure).

The key objective of the mutual agreement procedure is the resolution of disputes that result or will result in taxation which is not in accordance with the provisions of international treaty by a taxpayer (hereinafter - the taxpayer) who is a resident of the Republic of Azerbaijan or a foreign country (territory) party to the international treaty. The circumstances in which these disputes may arise are as follows:

- a case where an entity is considered a resident of both states;
- a case of potential existence of permanent establishment;
- a case where adjustments must be made to the income attributable to permanent establishment;
- a case of adjustment that has arisen or may arise from the application of the transfer pricing;
- a case where the provisions of an international treaty are misinterpreted and misapplied.

MAP is only carried out among relevant authorities provided for in the international treaties. A request for conducting a mutual agreement procedure must be filed, unless other period is specified in the international treaty, within three years as of the date on which the first notification of actions resulting in the taxation which is not accordance with the provisions of relevant international treaty was obtained or should have been obtained. Consideration of the request does not exempt the taxpayer from its obligation to pay the calculated tax and calculation of interests provided in the Tax Code is not ceased.

This document does not govern the consideration of request concerning the adoption of the "Decision on advance pricing agreements (APAs)".

The document may be subjected to amendments from time to time, if necessary.

## **1.1. Legal framework for Mutual Agreement Procedure (MAP) requests**

Article 25 of the Organization for Economic Co-operation and Development Model Tax Convention on Income and on Capital defines the methods of resolution of disputes which, as a result of the actions of one or both of the Contracting States, has resulted or will result in taxation of taxpayers which is not accordance with the provisions of the international treaty. Pursuant to second paragraph of the article on "Mutual agreement procedure" of international treaties, the State Tax Service attempts to resolve the dispute with the competent authority of the other Contracting State through mutual agreement.

In the majority of the international treaties entered into by the Republic of Azerbaijan, the requests by the taxpayers for MAP may requested solely to the competent authorities of the states where they are residents. Amendments to "Mutual agreement procedure" articles of a number of international treaties will be subject to amendments subsequent to the entry-into-force of the provisions of the "Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting" (MLI) signed by the Republic of Azerbaijan on November 20, 2023. According to the amendments, taxpayers will be able to present the case to the competent authority of either Contracting State.

## **2. Making a MAP request**

A taxpayer, by adding the following information and documents, should send a request in a soft or a hard copy to the Administration of the State Tax Service (hereinafter - the State Tax Service) under the Ministry of Economy of the Republic of Azerbaijan in order to make MAP request. The request may also be sent to [map@taxes.gov.az](mailto:map@taxes.gov.az), the e-mail address of the State Tax Service.

The following information should be included in the request for mutual agreement procedure:

- for legal entities – name of legal entity, legal and actual address, taxpayer identification number, telephone number, e-mail address; for individuals - first name, last name and patronymic (if any) of the person, registered address, taxpayer identification number, telephone number, e-mail address;
- with reference to the international treaty, the details about the inconsistency of key facts of the issue and inconsistency of the rules of taxation applicable in the Republic of Azerbaijan and (or) in a foreign country (territory) which is a party to the international

treaty, with provisions of the international treaty;

- information about the alleged period of violation of the provisions of effective international treaty as an outcome of taxation of income, profit or property;
- information on whether a taxpayer has made a MAP request to any authority;
- information on whether a request for MAP has been made to competent authorities of foreign country (territory) that is a party to the international agreement;
- information on "Advance pricing agreements" (APA) in force;

The following documents must be attached to the request:

- agreements and their annexes;
- copies of materials related to the tax audit;
- a copy of the tax residency issued by a foreign country (territory) that is a party to the international treaty;
- a copy of an authorised representative's power of attorney approved under the legislation of the Republic of Azerbaijan;
- a document confirming the date on which the first notification was obtained in respect of actions leading to taxation which is not in accordance with the provisions of relevant international treaty;
- If the request is related to transfer pricing, the documents determined by the requirements of the Guidelines on "Determination and application of transfer prices" approved by the Resolution No. 1717050000006200 of the Board of the Ministry of Taxes of the Republic of Azerbaijan dated January 27, 2017;
- other relevant documents on the requested case.

In the request, the taxpayer must confirm the accuracy and authenticity of the information and documents provided. In case of requirement by the tax authority of additional information and documents related to the resolution of the dispute, the taxpayer must ensure the delivery of relevant documents and information to the tax authority within a required period. The documents and information are acceptable only if provided in Azerbaijani or English.

### **3. Stages of the MAP process and interaction with domestic remedies**

#### *1<sup>st</sup> stage – Acceptance of the request*

Within a 10 days' time as of the receipt of taxpayer's MAP request by the tax authority, the tax authority notifies the taxpayer and the competent authority of the foreign country (territory) of the receipt of such request.

The State Tax Service shall, within 30 days from the date of receipt of the taxpayer's request to conduct the mutual agreement procedure, if additional time is required, by justifying the reason, and extending the period of consideration of request twice, by 30 days each time, review the request in question, the documents, and information attached thereto and reach a reasonable decision to conduct or decline the mutual agreement procedure and send this decision to requesting taxpayer.

The State Tax Service declines to deal with the mutual agreement procedure in the following cases:

- if an international treaty is absent or the addressed dispute is out of the scope of an international treaty;
- in the event that a three years' time, if no other timespan is stipulated in the international treaty, has passed since the date on which the first notification of action provided for in the first part of the Guidelines and leading to taxation, which is not accordance with provisions of the international treaty was obtained or should have been obtained;
- taking into account the period indicated below if the information contained in the request and the documents attached thereto are incomplete.

If the applicant has submitted incomplete documents or information, the tax authority sends a letter of notice to the applicant and requests for missing documents and information within 15 days.

In the event the taxpayer's MAP request is rejected in line with the requirement of subparagraph iii) of part 3 hereof, the taxpayer may reapply to the State Tax Service for the MAP upon providing relevant missing information and documents.

Consideration of requests related to transfer pricing and advance pricing agreements is governed by the Guidelines on "Determination and application of transfer prices" approved by the Resolution No. 1717050000006200 of the Board of the Ministry of Taxes of the Republic of Azerbaijan dated January 27, 2017.

## 2<sup>nd</sup> stage - Unilateral solution of the request

Once appropriate decision regarding the conduct of the mutual agreement procedure is reached by the State Tax Service, it sends a request to the competent authority of the foreign country (territory) that is a party to the international treaty with regard to initiation of the mutual agreement procedure and identifies the date of the initiation of the request based on written consultations.

If the State Tax Service accepts the legality of the dispute raised by the request and unilateral resolution of the request is possible, the State Tax Service ensures the solution of the dispute without consulting with the competent authority of the foreign country (territory) that is a party to the international treaty, and sends relevant information to the taxpayer and the competent authority of the foreign country (territory).

### 3<sup>d</sup> stage – Bilateral solution

In case if the dispute raised with regard to mutual agreement procedure is not possible to be unilaterally resolved, the State Tax Service carries out consultations to resolve the dispute with the competent authority of the foreign country (territory) that is a party to the international treaty with the aim of eliminating the case of double taxation according to the provisions of the international treaty. If a case with the identical content is being heard by an administrative body or at a court regarding the dispute specified in the request, the State Tax Service notifies the competent authority of the foreign country (territory) that is a party to the international treaty and suspends the mutual agreement procedure until the completion of the relevant dispute.

The State Tax Service is committed to seeking to resolve MAP cases no later than 24-month period as of the date of request for initiation of mutual agreement procedure received by the competent authority of the foreign country (territory). This period is not restricted to 24 months and may be extended until the resolution of the issue is reached by the parties.

Provided that reaching an agreement with competent authority of the foreign country (territory), which is a party to the international treaty, concerning the dispute raised in the mutual agreement procedure is possible, the taxpayer who requested to the State Tax Service for the mutual agreement procedure shall be notified in the written form within 30 days following the date of confirmation of the agreement.

If the agreement reached between the authorities fails to satisfy the taxpayer, the taxpayer may file a complaint to both the administrative body and the relevant court based on all the legal means set forth in the domestic remedies of the respective countries (territories).

If the taxpayer notifies the State Tax Service in writing about accepting the mutual agreement reached between the competent authorities, the State Tax Service ensures its implementation pursuant to the mutual agreement and takes appropriate measures in this regard. If the identical case concerning the relevant dispute is heard at an administrative body or at a court, the State Tax Service postpones taking appropriate measures by the time the taxpayer has the case resolved.

A taxpayer applying to the State Tax Service for the mutual agreement procedure can, at any time, apply to the State Tax Service for considering its request to be void. For this purpose, the taxpayer must, in a written form, notify the State Tax Service of the reasons for the request to be considered as inoperative. Subsequent to receipt by the State Tax Service of the letter regarding the request to be considered as invalid for conducting the mutual agreement procedure, it ceases the process for mutual agreement procedure with the competent authority of the foreign country (territory) and notifies the competent authority of the foreign country (territory) within 30 days from the date of receipt of the letter by the State Tax Service.

#### **4. Consideration of the MAP request of the competent authority of a foreign country**

In line with the provisions of the relevant international treaty, the competent authority of the foreign country (territory) may apply to the State Tax Service for the mutual agreement procedure. The request is accepted for consideration if the information and documents specified in part 2 hereof are attached to the request in question. In case of a shortage of relevant documents and information, the State Tax Service sends a request to the competent authority of the foreign country (territory) regarding the submission of relevant documents and information.

The State Tax Service analyses the MAP request by the competent authority of a foreign country (territory) for the mutual agreement procedure within 90 days and notifies, in writing, the competent authority of the foreign country (territory) regarding its position on whether it is acceptable or not.

When the State Tax Service deems the request of the competent authority of a foreign country (territory) which is a party to an international treaty acceptable, it takes appropriate measures

to eliminate actions which lead to double taxation incompliant with the provisions of the international treaty, and accordingly informs, in writing, the competent authority of the foreign country (territory).

In case of disagreement between the State Tax Service and the competent authority of a foreign country (territory) on the dispute raised in the MAP request and failure in resolution of the dispute, the State Tax Service shall, in writing, notify the competent authority of the foreign country (territory) which is a party to the international treaty about its position about the dispute.

## **5. Resolution of mutual agreement procedure**

The measures which the State Tax Service will take for the avoidance of double taxation and the actions leading to taxation that is not in accordance with the provisions of the international treaty cover the following:

- making amendments to relevant tax returns;
- refund of overpaid taxes;
- recognition of taxes paid;
- confirmation of taxes paid;
- and other measures.