

# CBDT Speeds Up MAP Dispute Resolution

**CHANGED RULES** Timeframe down to 24 months; authority can seek docs

## Our Bureau

**New Delhi:** The Central Board of Direct Taxes has eased the process of dispute resolution under Mutual Agreement Procedure (MAP) within tax treaties, by restricting the resolution time frame to 24 months and enabling the competent authority to seeking documents or holding discussions with the assessee or tax authorities, a shift from present regulation.

According to a notification issued on May 6, the Board made alterations to the rule 44G dealing with application and procedure for giving effect to MAP agreement and revised the Form 34F required for applying to the Competent Authority for invoking MAP. Currently, the resolution take anything between two to four years.

"Competent Authority in India shall endeavour to arrive at a mutually agreeable resolution of the tax disputes, in

accordance with the agreement between India and the other country or specified territory within an average time period of 24 months," the Board said.

"This is in line with the OECD recommendation under BEPS action 14. The existing regulations did not have any timeline for concluding MAPs," said Rohinton Sidhwa, partner at Deloitte India.

MNCs typically take the MAP route to resolve issues such as transfer pricing adjustment, permanent establishment determination and attribution, characterisation of income besides residential status under tax treaty.

The changed rules allow for the Indian Competent Authority to call for necessary documents, hold discussions with the income tax authorities or assesses, for understanding the facts of the case and how the action of the tax authorities is not in accordance with the tax treaty. This was not formally allowed in the pre-

## Faster Resolution

▶ Rules, form for invoking MAP amended

▶ Resolution within 24 months

Authority can seek docs/discussions with taxman/assesse

### Experts' View

Rules to help MNCs

Discussions with assesses to put minds at ease

24 month timeframe in line with BEPS

Will reduce the typical 2-4 years taken for resolution

amended rules.

In cases where the MAP is on account of a tax adjustment by the Indian tax authorities, the MAP resolution cannot result in reducing the taxable

income or increasing the loss as declared in the return of income filed in India.

The Competent Authority will now send the MAP resolution directly to the assessee in India. The assessee will have to submit its acceptance within 30 days, following which all pending appeals will have to be withdrawn.

Once the MAP has been accepted by the assessee, the same will be communicated to the assessing officer by the Competent Authority, for passing the final assessment order within one month from the end of the month of the receipt of the order.

"The new rules display the intent of the Government to achieve certainty and endeavour to bring faster resolution in place of long drawn traditional litigation process," said Sudin Sabnis, Director, Nangla Andersen.

"Post this amendment, with India not going in for mandatory binding arbitration, MAP will increasingly be used by MNCs to resolve contentious issues," said Amit Maheshwari, Tax Partner, AKM Global, a consulting firm.

# CBDT amends rule for speedy resolution of tax disputes under treaties

Change in rule 44G of MAP calls for mutually resolution of tax disputes as agreement between India and the other nation, within 24 months

Indivjal Dhasmana | New Delhi May 07, 2020 Last Updated at 17:15 IST



*The revised form 34F seeks details of remedy sought along with documentary evidence, in addition to assessee-specific information contained in the earlier form*

The Central Board of Direct Taxes (CBDT) has amended a rule to settle disputes expeditiously under the mutual agreement procedure (MAP), which is a dispute resolution process under tax treaties. It has also revised form 34F, which is used to make an application to invoke the MAP.

The direct tax board has amended rule 44G of MAP in this regard. The amended rule states that the competent authority in India will endeavour to arrive at a mutually agreeable resolution of tax disputes, in accordance with the agreement between the country and others, within an average of 24 months.

The amended rule further states that once a resolution is arrived at, the assessee concerned should communicate his acceptance or non-acceptance within 30 days of receiving the communication.

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Upon acceptance, the assessee will withdraw any appeal filed in this regard and pay the tax determined by the assessing officer.

The amended rule requires the competent authority in India to call for relevant records from the income tax authorities, assessee in the country, and also understand the action taken by authorities that are not in accordance with the terms of the agreements between New Delhi and that country.

The revised form 34F seeks details of remedy sought along with documentary evidence, in addition to assessee-specific information contained in the earlier form.

MAP is an alternative dispute resolution process under the tax treaties. Under it, competent authorities of respective countries enter into discussions to resolve the dispute, which has arisen due to any action of a tax authority not in accordance with the treaty.

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Sudin Sabnis, director at Nangia Andersen, said: "The indicative timeframe of an average 24 months to resolve the dispute under MAP would encourage taxpayers to hope for a speedy dispute resolution mechanism."

# Tax Dept prescribes 2-year window to resolve disputes through MAP

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Besides ensuring speed, new norms will provide certainty to taxpayers

To provide speedy dispute resolution for investors, the Central Board of Direct Taxes (CBDT) has modified the norms for Mutual Agreement Procedures (MAP) by prescribing two years as the average time-frame for resolving cases.

### What is MAP?

MAP is aimed at bringing in certainty via an alternative dispute resolution mechanism. It forms part of a tax treaty wherein competent authorities of respective countries enter into discussions to resolve

the dispute that has arisen by any action of a tax authority that is not in accordance with the tax treaty.

Earlier, there were two rules, 44G and 44H. 44G dealt with a case of an Indian resident taxpayer who was aggrieved by the action of the tax authority of another country, which was not in accordance with the tax treaty. 44H prescribed a case of reference from a competent authority of another country as regards action by the Indian income tax authority, wherein the competent authority of India called and examined the records to give his response to the competent authority of the other country in an effort to resolve the dispute. Now, CBDT has amended 44G and omitted 44H. The Board amended 44G dealing with application and procedure for giving effect to MAP agreement and revised Form 34F with respect to making application to the competent authority for invoking MAP. “The competent authority in India shall endeavour to arrive at a mutually-agreeable resolution of the tax disputes, in accordance with the agreement between India and the other country or specified territory within an average time period of twenty four months,” the notification said.

### To expedite process

Sudin Sabnis, Director at Nangia Andersen LLP, said the indicative time-frame of an average 24 months to resolve the dispute under MAP highlights the new rules that will expedite the dispute resolution mechanism. This is also in line with Action 14 of the BEPS Project prescribing a standard to endeavour to resolve MAP cases within two years. The potential involvement of the taxpayer in the process reassures the taxpayer that his grievance and submission are well heeded. The revised Form 34F now seeks to include actions of authorities which are not in accordance with the terms of the agreements as well as details of remedy, along with documentary evidence.

According to notification dated May 6, if a resolution is so arrived, the same shall be communicated to the assessee, who shall communicate his acceptance or non-acceptance within 30 days. Upon acceptance of the resolution, the assessee shall withdraw any appeal filed in this regard and pay the tax determined by the assessing officer (AO) after giving effect to the resolution. With regard to the issues contained in Form No. 34F, the amended rule requires the competent authority in India to call for relevant records from tax officers/assessee in India and understand the actions taken by the tax department that are not in accordance with the terms of the agreements between India and the other country or specified territory.

Here, notification defines 'competent authority in India' as an officer authorised by the Centre for the purposes of discharging the functions as such.

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