Content

Title：	Directions Governing Application of Mutual Agreement Procedures of Agreements for the Avoidance of Double Taxation with Respect to Taxes on Income Ch
Date：	2020.11.25
Legislative：	Amended and promulgated Article 10-1 by Decree No. 10924516470 issued by the Ministry of Finance on November 25, 2020. Promulgated by Decree No. 10724508540 issued by the Ministry of Finance on June 25, 2018.

Content：

Note: In case of any discrepancy between the English version and the Chinese text of these Regulations, the Chinese text shall govern.

Article 1

These Directions are set forth to regulate the process of mutual agreement procedures (hereinafter referred to as the “MAP”) under an applicable agreement for the avoidance of double taxation with respect to taxes on income (hereinafter referred to as the “DTA”).

Article 2

Where an applicant considers that the actions of the Republic of China (hereinafter referred to as the “ROC”), the other Contracting Party, or both Parties, result or will result for the applicant in taxation not in accordance with the provisions of the applicable DTA, the applicant may, irrespectively whether or not the applicant initiates an administrative remedy regarding such taxation in accordance with the domestic laws of both Contracting Parties, apply for MAP under the applicable DTA to the competent authority of the ROC. Applicable subjects are as follows:

1. Disputes arising from determining a dual resident’s ultimate residency.
2. Disputes arising from determining existence of a permanent establishment and double taxation caused from profit allocation to the permanent establishment.
3. Disputes regarding applying the provisions of reduction and exemption of the applicable DTA.
4. Transfer pricing corresponding adjustments.
5. Cross-border bilateral or multilateral Advance Pricing Arrangements.
6. Disputes regarding non-discrimination.
7. Disputes regarding applying the provisions for elimination of double taxation of the applicable DTA.
8. Any other double taxation caused from the application or interpretation of the applicable DTA.
9. Disputes regarding double taxation which cannot be eliminated when applying the applicable DTA.

Article 3
For the purposes of these Directions:
1. The term “agreement for the avoidance of double taxation with respect to taxes on income” means a treaty, agreement, or arrangement on income tax, including its full text, exchange of letter, annex, protocol, and any other similar international paper document signed by the ROC with the other Contracting Party and brought into force in accordance with Article 5 of the Tax Collection Act or any other laws.
2. The term “mutual agreement procedures” means procedures of discussion on tax matters between the competent authorities of the ROC and the other Contracting Party pursuant to the provisions of the MAP under the applicable DTA.
3. The term “the other Contracting Party” means a country or a jurisdiction with which the ROC has signed a DTA.
4. The term “both Contracting Parties” means the ROC and the other Contracting Party.
5. The term “competent authority” means, with respect to the ROC, the Ministry of Finance or other authorized agency or person who is designed to handle the MAP in accordance with a DTA in association with the term competent authorities; with respect to the other Contracting Party, the authorized agency or person who is designed to handle the MAP in accordance with a DTA in association with the term competent authorities.
6. The term “taxation notification,” in the case where an applicant considers that the taxation did not result in accordance with the applicable DTA, means notification with taxation content issued by the ROC and the other Contracting Party in any kind, including Notice for Assessment, Tax Bill, or any other official documents which have disposition effects on tax matters. In the case where an applicant considers that the taxation will not result in accordance with the applicable DTA, means any document related to taxation issued by the ROC or the other Contracting Party, which will probably, directly and necessarily lead to taxation not in accordance with the applicable DTA.

Article 4
When an applicant applies for MAP, the following provisions shall be accorded:
1. Persons covered: applicants shall be restricted to persons who are residents of the ROC, the other Contracting Party, or both Contracting Parties. Notwithstanding the foregoing, where provisions of the applicable DTA provide that persons shall not be restricted to residents as the aforementioned, such provisions shall prevail.
2. Taxes covered: taxation cases brought to MAP shall be restricted to taxes on income imposed by the ROC or the other Contracting Party. Notwithstanding the foregoing, where provisions of the applicable DTA provide that such taxes shall not be restricted to taxes on income, such provisions shall prevail.
3. Period covered: taxation cases brought to MAP shall be restricted to the year commencing from the date of entering the applicable DTA into effect specified in the entry into force provision of such agreement and ending before the date of ceasing the applicable DTA to have effect

specified in the termination provision of such agreement. Notwithstanding the foregoing, where provisions of the applicable DTA provide otherwise, such provisions shall prevail.

Article 5

An applicant applying MAP to the competent authority of the ROC with respect to Article 8 shall present the case no later than three years from the date of receiving the first taxation notification not in accordance with the provisions of the applicable DTA. With respect to Article 9, an applicant shall present the case no later than three years from the date of receiving the first taxation notification issued by the other Contracting Party indicated in subparagraph 6 of Article 3. Notwithstanding the foregoing, where provisions of the applicable DTA provide otherwise, such provisions shall prevail.

An applicant applying for bilateral or multilateral Advance Pricing Arrangements shall refer to the provisions of Article 10.

Article 6

An applicant applying for MAP to the competent authority of the ROC shall describe or provide the following subjects:

1. Name, Business Administration Number, National ID Card Number or Uniform ID Number, and resident country or jurisdiction of the applicant; names, Tax Identification Numbers, and the resident countries or jurisdictions of individuals, enterprises, organizations, or associations in other Contracting Parties when aforesaid individuals, enterprises, organizations, or associations are involved in the case.
2. The applicable DTA.
3. Taxation notifications issued by the competent authority of the ROC, the other Contracting Party, or both Contracting Parties when applying in accordance with Article 8 or Article 9.
4. Tax covered, taxable years, backgrounds, reasons, and assertions.
5. An applicant delegates another person to apply for MAP shall present a certified copy of the power of attorney.
6. Any other documentation facilitating the process of MAP between competent authorities of both Contracting Parties.

An applicant shall provide a Chinese translation when the relevant information and certified documentation provided in accordance with the preceding paragraph is in a foreign language. Notwithstanding the foregoing, a summary of the Chinese translation or the foreign language document may, instead, be provided as otherwise permitted by the competent authority of the ROC or tax collection authority-in-charge.

Article 7

The competent authority of the ROC shall confirm the receipt of applications or requests to the applicants or the competent authority of the other Contracting Party in proper means within ten days from the date of receipt of the MAP application made by applicants or MAP requests made by the competent authority of the other Contracting Party.

Article 8

Unless Article 9 and Article 10 otherwise require, the competent authority of the ROC shall review a MAP application made by an applicant in accordance with Article 4 and Article 5 within thirty days from the date of the receipt of the application. If the case meets relevant conditions, it shall be sent to the tax collection authority-in-charge for further review; if the case does not meet relevant conditions, the reviewed results shall be sent to the applicant and the competent authority of the other Contracting Party.

The tax collection authority-in-charge shall complete the review within sixty days from the receipt of the letter sent by the competent authority of the ROC, indicated in the preceding paragraph. If the conditions including the facts of the MAP application are considered reasonable, that the applicant has conducted all necessary actions, and that the issue could be resolved unilaterally by our side are met, the tax collection authority-in-charge shall notify the competent authority of the ROC and implement the resolution within ninety days from the date of sending notification; if the aforementioned conditions are not met, the tax collection authority-in-charge shall notify the competent authority of the ROC of statements of reasons in both Chinese and English. If the review cannot be completed within the required period, the tax collection authority-in-charge may apply to the competent authority of the ROC for an extension for sixty days. Such extension is limited to one time.

The competent authority of the ROC shall present a position paper to the competent authority of the other Contracting Party within ninety days from the receipt of the reviewing results made by the tax collection authority-in-charge indicated in the preceding paragraph. In the special circumstance that our position paper cannot be prepared within six months from the receipt of an application, the competent authority of the ROC shall, prior to the end of the aforementioned period, provide the competent authority of the other Contracting Party with a statement of reasons.

In the case that a MAP request is initiated by the competent authority of the other Contracting Party, the competent authority of the ROC shall review the request in accordance with Article 4 and Article 5 within thirty days from the date of the receipt of the request. If the request meets relevant conditions and is related to transfer pricing adjustments, the competent authority of the ROC shall authorize the tax collection authority-in-charge to enter MAP with the competent authority of the other Contracting Party. Once a MAP agreement is reached, the authorized tax collection authority-in-charge shall notify the competent authority of the ROC of the results and the provisions of paragraph 2 and paragraph 3 of Article 13 shall be applied mutatis mutandis; if the case is related to other kinds, the competent authority of the ROC shall send the case to the tax collection authority-in-charge for review and the provisions of the preceding two paragraphs shall be applied mutatis mutandis. If the request fails to meet relevant conditions, the competent authority of the ROC shall notify the competent authority of the other Contracting Party.

Article 9

When an applicant applies for MAP regarding transfer pricing corresponding adjustments on account of the double taxation caused by the other

Contracting Party levying tax in accordance with Arm's- length principles on profits of an enterprise which is a resident of that other Contracting Party, and the profits derived from controlled transactions have been taxed in the ROC, the competent authority of the ROC shall review the case in accordance with Article 4 and Article 5 within thirty days from the date of receipt of the applications. If the application does not meet relevant conditions, the reviewed results shall be sent to the applicant and the competent authority of the other Contracting Party; if the application meets relevant conditions, it shall be sent to the tax collection authority-in-charge for review as to whether the corresponding adjustments could be accepted. The tax collection authority-in-charge shall reply concerning the reviewed results within six months from the date of the receipt of the letter sent by the competent authority of the ROC. If the case is accepted, the tax collection authority-in-charge shall determine the amount of corresponding adjustments within twelve months from the date of the receipt of the letter sent by the competent authority of the ROC.
If the tax collection authority-in-charge agrees to make partial or full amount of transfer pricing corresponding adjustments, and the applicant accepts the adjustments, the tax collection authority-in-charge shall implement the adjustments within ninety days from the date of the acceptance by the applicants.
In the situations that the tax collection authority-in-charge does not accept the case, that the tax collection authority-in-charge disagrees to make full amount of transfer pricing corresponding adjustments, or that the tax collection authority-in-charge agrees to make partial amount of transfer pricing corresponding adjustments but is objected to by the applicant, the tax collection authority-in-charge shall send a notification to the applicants of the review results, or of decisions for the transfer pricing corresponding adjustments, and shall confirm whether the applicants intend the MAP to be continued. The tax collection authority-in-charge shall notify the competent authority of the ROC of statements of reasons in both Chinese and English. In the case that the applicant does not revoke the MAP application, the competent authority of the ROC shall initiate a MAP request to the competent authority of the other Contracting Party within thirty days from the date of the receipt of the notification sent by the tax collection authority-in-charge, as well as authorize the tax collection authority-in-charge to enter MAP with the competent authority of the other Contracting Party, and notify the applicant.
In the case that the authorized tax collection authority-in-charge indicated in the preceding paragraph reaches agreements about the transfer pricing corresponding adjustments with the competent authority of the other Contracting Party, it shall notify the competent authority of the ROC and the applicants of the agreements, and the provisions of paragraph 2 and paragraph 3 of Article 13 shall be applied mutatis mutandis.

Article 10
Where an applicant intends to apply for a cross-border bilateral or multilateral Advance Pricing Arrangement, it shall respectively and simultaneously apply to the competent authority of the ROC for MAP and to the tax collection authority-in-charge for Advance Pricing Arrangement.

The tax collection authority-in-charge shall review the applications in accordance with the requirements of the Advance Pricing Arrangement within thirty days from the date of the receipt of the application, and notify the applicant of the review results as well as inform the competent authority of the ROC. The competent authority of the ROC shall review the case in accordance with Article 4 within thirty days from the date of receipt of the applications, and notify the applicant of the review results. If the case does not meet relevant conditions of Article 4, notification shall be sent to the tax collection authority-in-charge. If the case meets relevant requirements of the Advance Pricing Arrangement and the conditions of Article 4, the competent authority of the ROC shall initiate a MAP request to the competent authority of the other Contracting Party within thirty days from the date of the receipt of the notification by the tax collection authority-in-charge, as well as authorize the tax collection authority-in-charge to enter MAP with the competent authority of the other Contracting Party, and notify the applicant. If the case does not meet relevant requirements of the Advance Pricing Arrangement nor the conditions of Article 4, the competent authority of the ROC shall notify the competent authority of the other Contracting Party.

Where the competent authority of the other Contracting Party agrees to enter into a MAP, the authorized tax collection authority-in-charge indicated in the preceding paragraph shall reach an agreement with the applicant on the comparables and its transaction result, assumptions, pricing policies, calculation methods, application period, and other major issues, which will be taken as the basis for discussion with the competent authority of the other Contracting Party.

When the authorized tax collection authority-in-charge reaches an agreement with the competent authority of the other Contracting Party, and the agreement is agreed by the applicant, the tax collection authority-in-charge shall enter into a cross-border bilateral or multilateral Advance Pricing Arrangement with the applicant. Where the agreement is not reached or the applicant does not agree with the agreement, if the applicant does not revoke the application for Advance Pricing Arrangement, the tax collection authority-in-charge shall evaluate, review, and conclude a unilateral Advance Pricing Arrangement in accordance with the Regulations Governing Assessment of Profit-Seeking Enterprise Income Tax on Non-Arm's-Length Transfer Pricing. The authorized tax collection authority-in-charge shall notify the competent authority of the ROC of the aforementioned situations.

Once a cross-border bilateral or multilateral Advance Pricing Arrangement is concluded, the case may be subject to the following:

1. In the case of an applicant requesting to apply the arrangement to its unconfirmed cases, the provisions of paragraph 1 to paragraph 3 shall be applied mutatis mutandis. The authorized tax collection authority-in-charge shall discuss with the competent authority of the other Contracting Party and notify the competent authority of the ROC and the applicant of the result of the agreement once an agreement is reached. The provisions of paragraph 2 and paragraph 3 of Article 13 shall be applied mutatis mutandis to the aforementioned situations.
2. In the case of an applicant applying for an extension prior to the

expiration of such agreement, the provisions of the preceding four paragraphs shall be applied mutatis mutandis. The authorized tax collection authority-in-charge shall discuss with the competent authority of the other Contracting Party and notify the competent authority of the ROC of the results of the agreement.

3. An applicant who presents its application in accordance with the preceding two subparagraphs shall submit the data to evidence no substantial change in the relevant facts or environment resulting in influencing the content of the Advance Pricing Arrangement.

Article 10-1

Where an applicant applies for a cross-border bilateral or multilateral Advance Pricing Arrangement, and thereafter changes its business address in the tax registration before the signing of the Arrangement, leading to a change in its tax collection authority-in-charge, it should notify the competent authority of the ROC within fourteen days from the date of the approval by the tax collection authority-in-charge into which it moved.

Where the competent authority of the ROC receives the above-mentioned notification, and examines that the previous authorized tax collection authority-in-charge is not the one with which the applicant filed its profit-seeking enterprise income tax return of the first year covered in the Arrangement indicated in paragraph 1, the competent authority of the ROC should change authorization and notify the competent authority of the other Contracting Party and the applicant.

Where the applicable years covered of a cross-border bilateral or multilateral Advance Pricing Arrangement fall under different tax collection authorities-in-charge, the one with the authorization may, in the process of mutual agreement procedures, require relevant tax collection authorities to provide information or opinions about the case, and notify relevant tax collection authorities within ten days from the date of the Arrangement concluded to implement it accordingly.

Article 11

A competent authority delegation procedure may be provided to proceed with MAP where controlled transactions conducted between an enterprise and its related parties occur in three countries or jurisdictions or more, provided that the following conditions are met:

1. Each participating country or jurisdiction mutually concludes an effective DTA which includes an article of MAP.

2. All participating countries or jurisdictions consent to enter into a MAP in writing.

3. The competent authority of a country or a jurisdiction gives delegated power in writing to a competent authority of another country or jurisdiction.

Article 12

Applicants' taxation information which is provided or received by the competent authority of the ROC and the tax collection authority-in-charge shall be maintained in confidentiality in accordance with the provisions of exchange of information under the applicable DTA.

Article 13
The competent authority of the ROC, which reaches an agreement with the competent authority of the other Contracting Party regarding an application referred to in paragraph 1 of Article 8, shall notify the applicant and the tax collection authority-in-charge of the fact within thirty days.
In the case of an agreement reached by the competent authorities of both Contracting Parties requiring the ROC to implement it accordingly, the tax collection authority-in-charge shall implement it within ninety days from the date of the agreement reached. However, in the case that the applicable DTA does not exclude applying domestic time-limit regulations, the implementation of the agreement shall be governed by domestic laws simultaneously.
After an agreement is reached by the competent authorities of both Contracting Parties, the competent authority of the ROC may inform the competent authority of the other Contracting Party to revoke the reached agreement if the applicant conceals material matters, provides misleading information, or intends to evade tax payment by fraud or unlawful means.

Article 14
During the process of the MAP, the competent authority of the ROC may inform the competent authority of the other Contracting Party to terminate the MAP under either of the following circumstances, and shall notify the applicant and the tax collection authority-in-charge within thirty days:
1. One of the Contracting Parties provides means to eliminate double taxation unilaterally.
2. The applicant revokes the application.
3. The competent authority of the ROC or the tax collection authority-in-charge notify the applicant to provide necessary information concerning MAP within the given time limit, but after the lapse of such time, the applicant still does not provide necessary information.
4. The applicant conceals material matters, provides misleading information, or intends to evade tax payment by fraud or unlawful means.
5. Other factors or reasons resulting in the competent authorities of both Contracting Parties being unable to proceed or unable to reach an agreement.

Data Source：Ministry of Finance, R.O.C. Laws and Regulations Retrieving System