

This document is a translation of the original Japanese-language Directive. The Japanese original is the official text.

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Office of Mutual Agreement Procedures 1-11

International Operations Division 1-3

Taxation Management Division 9-5

Individual Taxation Division 8-5

Property Taxation Division 7-23

Corporation Taxation Division 9-4

Revenue Management and Processing Division 3-4

Collection Division 5-5

Large Enterprise Examination Division 12-32

Date: June 25, 2001 (The latest amendment: February 14, 2022)

To: Regional Commissioners, Regional Taxation Bureaus

Regional Commissioner, Okinawa Regional Taxation Office

From: Commissioner, National Tax Agency

**Commissioner’s Directive on the Mutual Agreement Procedure  
(Administrative Guidelines)**

With regard to the mutual agreement procedure provided for in tax treaties, the procedures established below will be followed from now on.

“The Commissioner’s Directive on the Application Forms for the Mutual Agreement Procedure” issued on March 3, 1992 [Document ID: International Operations Division 3-1 and others] and “The Commissioner’s Directive on the Processing Applications for the Mutual Agreement Procedure” issued on March 3, 1992 [Document ID: International Operations Division 3-2 and others] are hereby repealed.

**(Purpose)**

This directive clarifies the procedures with regard to the mutual agreement procedure provided for in tax treaties.

## Chapter 1: General Rules

### 1. Definition of Terms

The meanings of the terms in this directive are as prescribed in the following.

- (a) Tax treaty: Convention or agreement Japan has concluded for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, or convention or agreement Japan has concluded for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on estates, inheritances and gifts.
- (b) Treaty partner: A contracting state or a contracting party of a tax treaty other than Japan.
- (c) MAP consultation: A consultation made pursuant to provisions of a tax treaty between the competent authority of Japan and the competent authority of a treaty partner.
- (d) Mutual agreement procedure (MAP): A series of procedures prescribed in this directive for implementing a MAP consultation.
- (e) Ministerial Ordinance (Income Tax Treaty): The Ministerial Ordinance Implementing the Act on Special Provisions of the Income Tax Act, the Corporation Tax Act, and the Local Tax Act regarding the Application of Tax Treaties (1969 Ministry of Finance/Ministry of Home Affairs Ordinance No. 1).
- (f) Ministerial Ordinance (Inheritance Tax Convention): The Ministerial Ordinance Implementing the Act on Special Provisions of the Inheritance Tax Act regarding the Application of the Convention between Japan and the United States of America for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Estates, Inheritances, and Gifts (1969 Ministry of Finance Ordinance No. 36).
- (g) Transfer pricing taxation: Taxation in Japan pursuant to paragraph 1 of Article 66-4 [Special Provisions for Transactions with Foreign Affiliated Persons] of the Act on Special Measures Concerning Taxation, or similar taxation in a treaty partner.
- (h) Commissioner's Directive on the Operation of Transfer Pricing: The Commissioner's Directive on the Operation of Transfer Pricing (Administrative Guidelines) issued on June 1, 2001 [Document ID: Large Enterprise Examination Division 7-1 and others].
- (i) Commissioner's Directive on the Operation of Auditing, etc. for Income Attributable to Permanent Establishments: The Commissioner's Directive on the Operation of Auditing, etc. for Income Attributable to Permanent Establishments (Administrative Guidelines) issued on June 28, 2016 [Document ID: Large Enterprise Examination Division 7-1 and others].
- (j) Commissioner's Directive on the Operation of Auditing, etc. for Various Income Attributable to Individual's Permanent Establishments: The Commissioner's Directive on the Operation of Auditing, etc. for Various Income Attributable to Individual's Permanent Establishments (Administrative Guidelines) issued on March 31, 2017 [Document ID: Individual Taxation Division 8-5 and others].

- (k) Grace of tax payment: Grace of tax payment provided for in Article 40-3-4 [Grace of Tax Payment Concerning Special Provisions for Taxation on Internal Dealings (including the cases where it is applied mutatis mutandis pursuant to paragraph 13, Article 41-19-5 [Special Provisions for Calculation of Foreign Income] of the said Act) and 66-4-2 [Grace of Tax Payment Concerning Special Provisions for Taxation on Transactions with Foreign Affiliated Persons] (including the cases where it is applied mutatis mutandis pursuant to paragraph 14 of Article 66-4-3 [Special Provisions for Taxation on Internal Dealings of Foreign Corporations] and paragraph 13 of Article 67-18 [Special Provisions for Calculation of Foreign Income] of the said Act) of the Act on Special Measures Concerning Taxation.
- (l) Directive on the Handling of the Grace of Tax Payment, etc.: The directive on the handling of the grace of tax payment, etc. provided for in the Establishment of the Commissioner's Directive on the Handling of the Grace of Tax Payment, etc. (Administrative Guidelines) issued on March 2, 2015 [Document ID: Collection Division 5-10 and other].
- (m) APA: An advance pricing arrangement prescribed in 1-1(40) of the Commissioner's Directive on the Operation of Transfer Pricing, 1-1(19) of the Commissioner's Directive on the Operation of Auditing, etc. for Income Attributable to Permanent Establishments or 1-1(16) of the Commissioner's Directive on the Operation of Auditing, etc. for Various Income Attributable to Individual's Permanent Establishments, or similar to these in a treaty partner.
- (n) Tax return: A tax return prescribed in item 37 of paragraph 1 of Article 2 [Definitions] of the Income Tax Act, item 31 of Article 2 [Definitions] of the Corporation Tax Act, item 16 of paragraph 1 of Article 2 [Definitions] of the Local Corporation Tax Act, item 8 of Article 6 [Definitions] and item 14 of Article 40 [Definitions] of the Act on Special Measures for Securing Financial Resources Necessary to implement Measures for Reconstruction following the Great East Japan Earthquake (hereinafter referred to as "the Reconstruction Funding Act") and items 2 and 3 of Article 1-2 [Definitions] of the Inheritance Tax Act, and documents that are to be attached to them.
- (o) Resident: A resident prescribed in item 3 of paragraph 1 of Article 2 of the Income Tax Act.
- (p) Non-resident: A non-resident prescribed in item 5 of paragraph 1 of Article 2 of the Income Tax Act.
- (q) Domestic corporation: A domestic corporation prescribed in item 3 of Article 2 of the Corporation Tax Act (including an association or foundation without juridical personality as prescribed in item 8 of the said Act.).
- (r) Foreign corporation: A foreign corporation prescribed in item 4 of Article 2 of the Corporation Tax Act (including an association or foundation without juridical personality as prescribed in item 8 of the said Act.).
- (s) Applicant: An individual or a corporation (including an association or foundation without juridical personality as prescribed in item 8 of Article 2 of the Corporation Tax Act; the same shall apply hereinafter) that has filed a request for a MAP.

- (t) Foreign affiliated person: A foreign affiliated person prescribed in paragraph 1 of Article 66-4 of the Act on Special Measures Concerning Taxation, or a person similar to these prescribed in treaty partner's laws or regulations on transfer pricing taxation.
- (u) MAP Office: The Office of Mutual Agreement Procedures of the Commissioner's Secretariat of the National Tax Agency.
- (v) NTA Collection Division: The Collection Division of the Collection Department of the National Tax Agency.
- (w) Related NTA division: The Taxation Management Division, Individual Taxation Division, Property Taxation Division or Corporation Taxation Division of the Taxation Department of the National Tax Agency; the Revenue Management and Processing Division of the Collection Department of the National Tax Agency; or the Large Enterprise Examination Division of the Large Enterprise Examination and Criminal Investigation Department of the National Tax Agency.
- (x) RTB Special Collection Group: The First Special Collection Co-ordination Divisions of the Collection Departments of the Regional Taxation Bureaus(the Special Collection Co-ordination Division in the case of the Nagoya Regional Taxation Bureau, the First Special Collection Group in the case of the Sapporo Regional Taxation Bureau, Sendai Regional Taxation Bureau, Hiroshima Regional Taxation Bureau, Takamatsu Regional Taxation Bureau, Fukuoka Regional Taxation Bureau and Kumamoto Regional Taxation Bureau, and the Special Collection Group in the case of the Kanazawa Regional Taxation Bureau), or the Special Collection Group of the Okinawa Regional Taxation Office.
- (y) Related RTB division: The Taxation Management Divisions, Individual Taxation Divisions or Property Taxation Divisions of the First Taxation Departments of the Regional Taxation Bureaus (or of the Taxation Departments in the case of the Kanazawa Regional Taxation Bureau, Takamatsu Regional Taxation Bureau and Kumamoto Regional Taxation Bureau); or the Corporation Taxation Divisions of the Second Taxation Departments of the Regional Taxation Bureaus (or of the Taxation Departments in the case of the Kanazawa Regional Taxation Bureau, Takamatsu Regional Taxation Bureau and Kumamoto Regional Taxation Bureau); the Revenue Management and Processing Divisions or the Collection Divisions of the Collection Departments of the Regional Taxation Bureaus; the Management Divisions (Large Enterprise Examination) of the Large Enterprise Examination and Criminal Investigation Departments of the Regional Taxation Bureaus (or of the First Large Enterprise Examination Departments in the case of the Tokyo Regional Taxation Bureau and Osaka Regional Taxation Bureau or of the Large Enterprise Examination Department in the case of the Nagoya Regional Taxation Bureau); or the Taxation Management Division, Individual Taxation Division, Property Taxation Division, Corporation Taxation Division, Collection Division or Large Enterprise Examination Division of the Okinawa Regional Taxation Office.

- (z) Revenue Management and Processing Group: The group that is in charge of revenue management and processing affairs (in the case of a tax office that has no such department, the Co-ordination Division).
- (aa) Collection Group: The group that is in charge of tax collection affairs (in the case of a tax office that has no such department, the Co-ordination Division).
- (bb) Individual Management Group: The group that in charge of affairs related to individual tax (including examination affairs related to withholding income tax), special individual tax for reconstruction and consumption tax in connection with the transfer, etc. of individual's properties in the Tax Office.
- (cc) Corporation Management Group: The group that is in charge of affairs related to corporation tax, local corporation tax, special corporation tax for reconstruction, withholding income tax, special income tax for reconstruction, consumption tax in connection with the transfer, etc. of a corporation's properties, liquor tax and other indirect taxes in the Tax Office.
- (dd) Grace of tax collection (of local taxes): Grace of tax collection provided for in the following provisions regarding an individual or a corporation.
  - (i) Regarding an individual, the provisions of Article 44-2 [Grace of Tax Collection for an Individual's Prefectural Resident Tax Where a Mutual Agreement Procedure Has Been Requested Pursuant to the Provisions of an Applicable Tax Treaty], Article 72-57-2 [Grace of Tax Collection for an Individual's Business Tax Where a Mutual Agreement Procedure Has Been Requested Pursuant to the Provisions of an Applicable Tax Treaty] and Article 321-7-13 [Grace of Tax Collection for an Individual's Municipal Inhabitant Tax Where a Mutual Agreement Procedure Has Been Requested Pursuant to the Provisions of an Applicable Tax treaty] of the Local Tax Act.
  - (ii) Regarding a corporation, the provisions of Article 55-2 [Grace of Tax Collection for a Corporation's Prefectural Resident Tax Where a Mutual Agreement Procedure Has Been Requested Pursuant to the Provisions of an Applicable Tax Treaty], Article 72-39-2 [Grace of Tax Collection for a Corporation's Business Tax Where a Mutual Agreement Procedure Has Been Requested Pursuant to the Provisions of an Applicable Tax Treaty] and Article 321-11-2 [Grace of Tax Collection for a Corporation's Municipal Inhabitant Tax Where a Mutual Agreement Procedure Has Been Requested Pursuant to the Provisions of an Applicable Tax Treaty] of the Local Tax Act.
- (ee) Notification to prefectures, etc. regarding the grace of tax collection (of local taxes): A notification of the grace of tax collection provided for in the following provisions regarding an individual or a corporation.
  - (i) Regarding an individual, the provision of Article 72-57-3 [The NTA Commissioner's Notification Regarding the Grace of Tax Collection for an Individual's Business Tax] and Article 321-7-14 [The NTA Commissioner's Notification Regarding the Grace of Tax Collection for an Individual's Municipal Inhabitant Tax] of The Local Tax Act.

- (ii) Regarding a corporation, the provisions of Article 55-3 [The NTA Commissioner's Notification Regarding the Grace of Tax Collection for a Corporation's Prefectural Resident Tax] and Article 72-39-3 [The NTA Commissioner's Notification Regarding the Grace of Tax Collection for a Corporations' Business Tax] of The Local Tax Act.
- (ff) The Prefectural Resident Tax Division: The division, office etc. in a prefectural government that is in charge of affairs regarding Tokyo Metropolitan Inhabitant Tax or Prefectural Resident Tax and Business Tax.
- (gg) The Municipal Resident Tax Division: The division, office etc. in a municipal government that is in charge of affairs regarding Special Ward Inhabitant Tax or Municipal Inhabitant Tax.
- (hh) Taxable year: A taxable year prescribed in Article 13 [Meaning of Business Year] (including periods that are to be deemed to be a taxable year pursuant to Article 14 [Deemed Business Year]), a taxable year prescribed in Article 7 [A Taxable Business Year] of the Local Corporation Tax Act or a taxable year prescribed in paragraph 1 of Article 72-13 [A Business Year] of the Local Tax Act.
- (ii) Implementing Arrangement Regarding the Arbitration Procedure: An arrangement that the competent authorities of Japan and a treaty partner have established by mutual agreement pursuant to the provisions of an applicable tax treaty regarding the mode of application of the arbitration procedure.

## **2. Implementation of the MAP Consultation**

- (1) The MAP Office will deal with MAP consultations for the individual cases. Administrative affairs concerning the grace of tax payment shall be dealt with by the RTB Special Collection Group.
  - (Note) It should be noted that the Tax Bureau of the Ministry of Finance will deal with the MAP consultations with regard to the general interpretation of tax treaties.
- (2) The MAP Office will endeavor to resolve cases appropriately and promptly, with the purpose of eliminating taxation not in accordance with the provisions of tax treaties.
- (3) In the process of the MAP consultations, the MAP Office may exchange opinions with related NTA divisions or other sections as necessary.
  - (Note) It should be noted that the MAP Office is to consult with the Ministry of Internal Affairs and Communications in advance where the MAP consultation or the content of the mutual agreement is related to taxes imposed on by a local government, according to paragraph 1 of Article 8 [Mutual Agreement Procedure under Tax Treaties Concerning Local Taxes] of the Act on Special Provisions of the Income Tax Act, the Corporation Tax Act and the Local Tax Act regarding the Application of Tax Treaties (1969 Act No. 46).

## **Chapter 2: MAP Consultations**

### **Requested in Japan.**

### 3. Request for a MAP

(1) A request for a MAP can be made, as illustrated in the following examples, pursuant to the provisions of an applicable tax treaty, and in accordance with paragraph 1 of Article 12 [Procedures for Requests Related to Taxation Not in Accordance with the Provisions of a Tax Treaty] or Article 13 [Procedures for Requests Related to Dual Residency] of the Ministerial Ordinance (Income Tax Treaty) or paragraph 1 of Article 3 [Procedures for Requests Related to Double Taxation] of the Ministerial Ordinance (Inheritance Tax Convention).

(a) Cases in which a domestic corporation requests a MAP on the grounds that the corporation has been, or will be subject to transfer pricing taxation in Japan or in a treaty partner regarding transactions between the domestic corporation and its foreign affiliated person.

(Note)<sup>1</sup> Where a case falls under (a) and a MAP requested for such a case by a domestic corporation is related to transactions between the domestic corporation and its foreign associated enterprises which are located in two or more treaty partners, it should be noted that the domestic corporation is required to make a request for a MAP with each of the treaty partners where the foreign associated enterprises are located.

2 It should be noted that a domestic corporation can make a request for a MAP in order to eliminate double taxation arising from its foreign affiliated person's action taken in a treaty partner, which is equivalent to filing an amended return described in paragraph 3 of Article 19 [Amended Return] of the Act on General Rules for National Taxes subject to paragraph 5 of 65 [Additional Tax for Deficient Returns] of the said Act, regarding the transaction between the domestic corporation and the foreign affiliated person.

(b) Cases in which a resident or a domestic corporation requests a MAP on the grounds that the resident or the domestic corporation has been, or will be subject to taxation not in accordance with the provisions of the applicable tax treaty regarding the presence of its permanent establishment in a treaty partner, or regarding the amount of profit attributable to the permanent establishment.

(c) Cases in which a resident or a domestic corporation requests a MAP on the grounds that the resident or the domestic corporation has been, or will be subject to taxation not in accordance with the provisions of the applicable tax treaty regarding income tax withheld in the treaty partner.

(d) Cases in which a non-resident who has Japanese nationality requests a MAP on the grounds that the person has been, or will be subject to more burdensome taxation or requirements in a treaty partner than the taxation or requirements applied to the nationals of the treaty partner.

(e) Cases in which a Japanese resident who is also regarded as a resident of a treaty partner under laws of the treaty partner requests a MAP in order to determine the nation of which the individual is to be deemed to be a resident under the applicable tax treaty.

(f) Cases in which an individual who is liable for inheritance tax or gift tax under the Inheritance Tax Act requests a MAP in order to avoid double taxation in accordance with paragraph 1 of Article 3 of the Ministerial Ordinance (Inheritance Tax Convention).

(g) Cases in which a resident or a domestic corporation requests a MAP on the grounds that the resident or the domestic corporation has been, or will be subject to taxation not in accordance with the provisions of the applicable tax treaty, resulting from the adjustment made in Japan or the treaty partner through the application of the treaty Anti-abuse provisions or the domestic Anti-abuse provisions described in the tax treaty or the domestic laws.

(Note) It should be noted that a request for a MAP can be made pursuant to the provisions of an applicable tax treaty, regardless of whether the applicant or its foreign affiliated person has filed an administrative appeal or a lawsuit regarding the taxation which is the subject of the request.

(2) Notwithstanding (1), a request for a MAP related to an APA can be made, if a request for a MAP is made together with requesting an APA pursuant to 6-2 of the Commissioner's Directive on the Operation of Transfer Pricing, 7-1 of the Commissioner's Directive on the Operation of Auditing, etc. for Income Attributable to Permanent Establishments or 6-1 of the Commissioner's Directive on the Operation of Auditing, etc. for Various Income Attributable to Individual's Permanent Establishments (hereinafter referred to as "request for an APA" in (2)).

(Note)1 Where a person, who will file or has filed a request for a MAP with respect to the case falling under (1)(a) or (b), requests for another MAP regarding the subsequent taxable year or years following the taxable year or years concerned with the first-mentioned request (hereinafter referred to as "the subsequent taxable year" in this (Note)) on the ground that the relevant facts and circumstances in the subsequent taxable year are or are likely to be the same as those in the taxable year or years concerned with the first-mentioned request, it should be noted that the person is required to file a request for an APA regarding the subsequent taxable year and for a MAP regarding the APA.

2 Where a request for an APA is regarding transactions between a domestic corporation and its foreign affiliated persons in two or more treaty partners, it should be noted that such a domestic corporation is required to file a request for a MAP with each of treaty partners in which the foreign affiliated persons are situated.

#### **4. Time Limit**

It should be noted that some tax treaties have provisions that set time limits governing requests for a MAP.

#### **5. Pre-filing Consultation**

(1) The MAP Office will accede to a request for a pre-filing consultation from an individual or a corporation regarding a MAP (including a consultation on an anonymous basis through an agent of

the individual or the corporation, hereinafter referred to as “pre-filing consultation”) prior to the applicant’s request for a MAP, and will deal with it appropriately, e.g. by giving some necessary advices.

- (2) Where the request for a pre-filing consultation in (1) is in relation to an APA, upon a request by the MAP Office, the related NTA divisions or the related RTB division (the related RTB divisions prescribed in 1-1(43) of the Commissioner’s Directive on the Operation of Transfer Pricing or 1-1(25) of the Commissioner’s Directive on the Operation of Auditing, etc. for Income Attributable to Permanent Establishments, or the RTB Individual Taxation Division prescribed in 1-1(22) of the Commissioner’s Directive on the Operation of Auditing, etc. for Various Income Attributable to Individual’s Permanent Establishments) may participate in pre-filing consultations as necessary.

(Note) It should be noted that a prospective applicant for a MAP in relation to an APA can request a pre-filing consultation either with the MAP Office or with the related RTB division, since the related RTB division also accedes to a request for a pre-filing consultation prior to an APA request (refer to 6-10 of the Commissioner’s Directive on the Operation of Transfer Pricing, 6-9 or 7-9 of the Commissioner’s Directive on the Operation of Auditing, etc. for Income Attributable to Permanent Establishments, or 5-9 or 6-9 of the Commissioner’s Directive on the Operation of Auditing, etc. for Various Income Attributable to Individual’s Permanent Establishments ).

- (3) Where the MAP Office has acceded to a request for a pre-filing consultation in (1), it may, as necessary, ask the related NTA divisions to take measures to retain the documents necessary for a MAP consultation or for implementing a mutual agreement (hereinafter referred to as “the mutual agreement”). These documents include tax returns, letters of assessment, examination documents for withholding income tax, tax collection cards, etc. (hereinafter collectively referred to as “documents regarding tax returns” ).
- (4) Where the MAP Office has recognized that the prospective applicant has its intention to apply for the grace of tax payment in the course of a pre-filing consultation provided for in (1), it will, as necessary, inform the related NTA divisions and the NTA Collection Division of that fact.
- (5) Where a related NTA division has been required to take measures to retain documents regarding tax returns referred to in (3) from the MAP Office, it will instruct the related RTB divisions not to dispose of the documents regarding tax returns even the document retention periods prescribed in the Regulations on the Treatment of Administrative Documents of the National Tax Agency [the National Tax Agency Regulation 2011-1] has been exceeded.
- (6) Where the related NTA division and the NTA Collection Division have been informed in (4) from the MAP Office, they will, as necessary, give necessary instructions to the related RTB divisions and the RTB Special Collection Group.
- (7) Where the related RTB division has received the instructions pursuant to (5) or (6) from the related NTA divisions and the NTA Collection Division, it will provide the necessary instructions to the District Director of the Tax Office in charge.

## 6. Procedures for Requesting a MAP

- (1) A request for a MAP shall be made by submitting “Application for the Mutual Agreement Procedure” (Form 1) and the documents listed below (hereinafter referred to as “attachments”) to the MAP Office.

(Note) 1 Contact details of the MAP Office are as follows:

- Name: Office Of Mutual Agreement Procedures, National Tax Agency
- Office Address: 3-1-1, Kasumigaseki Chiyoda-Ku, Tokyo 100-8978, JAPAN
- Tel: +81-3-3593-6388

2 Where an Application for the Mutual Agreement Procedure has been mistakenly submitted to a tax office, the Revenue Management and Processing Group will forward the submitted Application to the MAP Office without delay and notify the applicant of that fact.

- (a) If the MAP request is made on the ground that a person has been subject to taxation not in accordance with the provisions of a tax treaty in Japan or in a treaty partner: copies of the letter of the assessment or other documents that prove such taxation, a written description of the details of the facts and an outline of the position of the applicant or its foreign affiliated person regarding taxation (if the MAP request will be made on the ground that a person will be subject to taxation not in accordance with the provisions of the tax treaty in Japan or in the treaty partner: a detailed description how the action of Japan or the treaty partner will result in taxation and an outline of the position of the applicant or its foreign affiliated person regarding such taxation).
- (b) If the MAP request is made on the ground that a person has been subject to taxation not in accordance with the provisions of a tax treaty in Japan or in a treaty partner, and the applicant or its foreign affiliated person has filed an administrative appeal or a lawsuit regarding the taxation: in addition to the documents described in (a), documents indicating that an administrative appeal or a lawsuit has been filed, and an outline of the position of the applicant or its foreign affiliated person regarding the taxation, together with a copy of the complaint for the administrative appeal or the lawsuit.
- (c) If the MAP request is regarding transfer pricing taxation in Japan or in a treaty partner: in addition to the documents in (a), documents describing the direct or indirect capital relationship or the de facto of control between the parties involved in the transactions that are the subject of the request.
- (d) If the MAP request is related to Article 13 of the Ministerial Ordinance (Income Tax Treaty), and the applicable tax treaty or intergovernmental agreements appended to the tax treaty provide for items that should be considered in a MAP consultation: in addition to the documents in (a), documents relating those items.

- (e) If the applicant or its foreign affiliated person has made a request for a MAP to the competent authority of the treaty partner: in addition to the documents in (a), a copy of documents explaining that fact.
  - (f) Other documents that are relevant to the MAP.
- (2) It should be noted that, if a request for a MAP is related to an APA, the related documents are to be attached to the Application for the APA, and shared with the MAP Office by the District Director of the Tax Office having jurisdiction over the place for the tax payment of the APA applicant corporation, the APA applicant domestic corporation or the APA applicant resident (by the Regional Commissioner of the Regional Taxation Bureau or the Okinawa Taxation Office where the applicant is under the jurisdiction of the RTB Large Enterprise Examination Division) via a related NTA division (refer to 6-2 to 6-6 of the Commissioner's Directive on the Operation of Transfer Pricing, 7-1 to 7-5 of the Commissioner's Directive on the Operation of Auditing, etc. for Income Attributable to Permanent Establishments or 6-1 to 6-5 of the Commissioner's Directive on the Operation of Auditing etc. for Various Income Attributable to Individual's Permanent Establishments).

#### **7. Measures for Retaining Documents Regarding Tax Returns**

- (1) Where the MAP Office has received an Application for the Mutual Agreement Procedure and attachments from an applicant pursuant to 6(1), the MAP Office will notify the related NTA divisions of that fact with a copy of the Application for the Mutual Agreement Procedure, and require them to take measures to retain the documents regarding tax returns of the applicant.
- (2) Where the related NTA division has been required to take measures to retain the documents regarding tax returns from the MAP Office pursuant to (1), the related NTA division will provide instructions to the related RTB divisions pursuant to 5(5).
- (3) Where the related RTB division has received the instructions referred to in (2) from the related NTA divisions, the related RTB division will provide the necessary instructions to the District Director of the Tax Office having jurisdiction over the place of the applicant's tax payment.

#### **8. Review of Items to Be Included in the Application for the Mutual Agreement Procedure**

- (1) Where the contents of the Application for the Mutual Agreement Procedure or the attachments submitted by the applicant have any deficiencies, the MAP Office will request the applicant to correct them.
- (2) The MAP Office will request the applicant to submit the documents that are considered necessary for the determination of whether the request for the MAP made by the applicant is justified.
- (3) Where the MAP Office has requested the applicant for the correction referred to in (1) or the submission of the documents referred to in (2), the MAP Office will record that fact and the status of the subsequent correction or submission of the documents.

- (4) Where the request for a MAP is made on the ground that the applicant has been subject to taxation not in accordance with the provisions of a tax treaty in Japan, the MAP Office will require the related NTA divisions to share the documents explaining the details of the taxation (if the request for a MAP is made on the ground that the applicant will be subject to taxation not in accordance with the provisions of a tax treaty in Japan, an outline of the relevant facts regarding the taxation).

## **9. Submission of Documents**

- (1) The MAP Office will request the applicant to submit the documents that are considered necessary for the implementation of the MAP consultation.
- (2) Where the MAP Office has requested the applicant for the submission of documents referred to in (1), it will record that fact and the status of the subsequent submission of the documents.

## **10. Submission of Translated Documents**

The MAP Office will, as necessary, ask the applicant for Japanese translations of attachments or other documents submitted by the applicant which are in foreign languages.

## **11. Explanations of Submitted Documents**

The MAP Office will, as necessary, request the applicant to provide explanations of attachments or other documents.

## **12. Communicating Changes of Submitted Documents, etc.**

- (1) The MAP Office will request the applicant to contact it without delay in the event that the applicant detects an error or where a significant change has arisen in the contents of the Application for the Mutual Agreement Procedure, attachments or other documents submitted by the applicant.
- (2) The MAP Office will request the applicant to contact it without delay to update the status of the tax disposition, administrative appeal, APA review, etc. in the treaty partner.

## **13. Proposal of the Initiation of a MAP Consultation to the Competent Authority of the Treaty Partner**

- (1) After the submission of Application for the Mutual Agreement Procedure and attachments from an applicant has been made pursuant to 6(1) (in the case the applicant was requested by the MAP Office to correct the deficiencies referred to in 8(1) or submit the documents referred to in 8(2), only after the applicant has done so), the MAP Office will propose initiation of a MAP consultation to the competent authority of the treaty partner, where the request for a MAP is considered to be justified (if the request for a MAP is for an APA, where a notification to the MAP Office is made pursuant to 6-13(2) of the Commissioner's Directive on the Operation of Transfer Pricing, 7-12(2) of the Commissioner's Directive on the Operation of Auditing, etc., for Income Attributable to Permanent Establishments or 6-12(2) of the Commissioner's Directive on the Operation of Auditing,

etc., for Various Income Attributable to Individual's Permanent Establishments). However, the MAP Office will not propose to initiate a MAP consultation where a proposal of initiation of a MAP consultation has already been made by the competent authority of the treaty partner with regard to the taxation or the APA, etc. which is the subject of the request for the MAP.

- (2) The MAP Office will notify the competent authority of the treaty partner that initiation of a MAP consultation will not be proposed, if the MAP Office will not propose such initiation to the competent authority of the treaty partner for the following reasons, except for the reason described in (3). Unless the competent authority of the treaty partner presents an objection to the termination of the MAP, the procedures prescribed in 17(2) will apply thereafter.
  - (a) The applicant has not followed the MAP Office's instruction to correct the application referred to in 8(1) or to submit the documents referred to in 8(2);
  - (b) The request for a MAP consultation is not considered to be justified (in the case that the request for a MAP is regarding an APA, the request for an APA falls within 6-14(1) of the Commissioner's Directive on the Operation of Transfer Pricing, 7-13(1) of the Commissioner's Directive on the Operation of Auditing, etc., for Income Attributable to Permanent Establishments or 6-13(1) of the Commissioner's Directive on the Operation of Auditing, etc., for Various Income Attributable to Individual's Permanent Establishments).
- (3) The MAP Office will notify the applicant that initiation of a MAP consultation will not be proposed, if it will not propose such initiation to the competent authority of the treaty partner for the following reasons, limited for a request for an APA.
  - (a) A request for an APA has not been made pursuant to 6-2 of the Commissioner's Directive on the Operation of Transfer Pricing, 7-1 of the Commissioner's Directive on the Operation of Auditing, etc., for Income Attributable to Permanent Establishments or 6-1 of the Commissioner's Directive on the Operation of Auditing, etc., for Various Income Attributable to Individual's Permanent Establishments (including the case in which the applicant has withdrawn the request for an APA).
  - (b) The case specified by 6-14(1)(c) of the Commissioner's Directive on the Operation of Transfer Pricing or 7-13(1)(c) of the Commissioner's Directive on the Operation of Auditing, etc., for Income Attributable to Permanent Establishments.
- (4) Where the MAP Office has provided the applicant with the notification referred to in (3), it will inform the related NTA division of that fact.
- (5) Where the related NTA division has received the notification pursuant to (4) from the MAP Office, it will inform the related RTB divisions of that fact.

#### **14. Updating Applicants on the Status of the MAP Consultation**

The MAP Office will, upon a request from the applicant or when otherwise necessary, update the applicant on the status of the MAP consultation to the extent that such updating does not interfere with operation of MAP.

**15. Confirmation of the Applicant’s Intentions before Reaching Agreement**

- (1) Where it is recognized that an agreement is going to be reached with the competent authority of the treaty partner, the MAP Office will inform the applicant of the contents of the proposed agreement in writing, and ask whether the applicant accepts the contents of the proposed agreement.  
(Note) The MAP office will, if necessary, explain to the applicant that the taxes calculated based on the proposed agreement may affect the amount of the accessory tax prescribed in item 4 of Article 2 [Definitions] of the Act on General Rules for National Taxes.
- (2) The MAP Office will reach a mutual agreement with the competent authority of the treaty partner after confirming that the applicant accepts the contents of the proposed agreement pursuant to (1).

**16. Notification of the Mutual Agreement**

- (1) Where a mutual agreement has been reached on a MAP consultation, the MAP Office will notify the applicant of the date (referred to as “the date of the agreement” in (2)) and contents of the agreement, using “Notification That a Mutual Agreement Has Been Reached” (Form 2) (hereinafter referred to as “Notification of the Mutual Agreement” in (2)).
- (2) Where the MAP Office has provided the applicant with the Notification referred to in (1), the MAP Office will notify the related NTA divisions of that fact with a copy of the Notification of the Mutual Agreement regarding the notification (The MAP Office will also notify the NTA Collection Division of that fact, if the individual tax, corporation tax or local corporation tax dealt with in the MAP consultation regarding the Notification is relating to the procedures on the grace of tax payment.).
- (3) Where the related NTA division and the NTA Collection Division have received the notification from the MAP Office pursuant to (2), they will instruct the related RTB divisions and the RTB Special Collection Group to implement the mutual agreement and to take measures related to the grace of tax payment in pursuant to the applicable tax treaty, and relevant laws and directives.
- (4) Where a related RTB division has received the instructions pursuant to (3) from the related NTA division, the related RTB division will give the instructions necessary for implementing the mutual agreement to the District Director of the Tax Office having jurisdiction over the place of the applicant’s tax payment.

**17. Termination of the MAP**

- (1) After initiation of a MAP consultation, the MAP Office will propose termination of the MAP consultation to the competent authority of the treaty partner where:
  - (a) it has been determined that the subject of the request for the MAP is not a subject to be discussed in a MAP consultation under the applicable tax treaty;

- (b) the applicant who requested a MAP related to an APA has withdrawn the request for the APA;
- (c) false statements, etc. have been found in the Application for the Mutual Agreement Procedure or the attachments;
- (d) the applicant does not cooperate in providing the documents necessary for the MAP consultation;
- (e) it is not possible to gather the documents necessary for the MAP consultations because a significant amount of time has elapsed since taxation in Japan or in the treaty partner, or due to other reasons;
- (f) the applicant does not accept the proposed agreement in 15 (1);
- (g) in the case of a request for a MAP is regarding an APA, it is recognized that the continuation of the MAP consultation will not result in an appropriate resolution for the reason that a discrepancy which would seriously affect the mutual agreement exists between the request for a MAP made pursuant to 6(1) and a request for a MAP made to the competent authority of the treaty partner;  
or
- (h) it is recognized that the continuation of the MAP consultation will not result in an appropriate resolution;

(Note) For instance, the case which falls within (h) is illustrated as follows:

- 1 where it is found as difficult for the treaty partner to ensure the implementation of MAP agreement due to its domestic laws or administrative practice such as the absence of an APA program or procedure.
  - 2 where, with respect to an APA case, the competent authority of a treaty partner has not sent any position paper, which presents its view on the method of calculation of arm's length price and other related items thereof, to the MAP Office by the date on which one year period has elapsed since the date on which the MAP Office presented its position paper to the competent authority notwithstanding the competent authority has received written requests repeatedly from the MAP Office in the period.
- (2) Where the competent authority of the treaty partner has accepted the proposal made from the MAP Office pursuant to (1), the competent authority of the treaty partner has not presented an objection to the termination of the MAP notified pursuant to 13(2) or the MAP Office has accepted the proposal received from the competent authority of the treaty partner to terminate the MAP consultation, the MAP Office will notify the applicant that the MAP has been terminated by "Notification for Termination of Mutual Agreement Procedure" (Form 3).
- (3) Where the MAP Office has provided the applicant with the Notification referred to in (2), the MAP Office will notify the related NTA divisions of that fact (The MAP Office will also notify the NTA Collection Division of that fact, if the income tax, corporation tax or local corporation tax dealt with in the MAP consultation regarding the Notification is relating to the procedures on the grace of tax payment.).

- (4) Where the NTA Collection Division has received the notification pursuant to (3) from the MAP Office, the NTA Collection Division will instruct the RTB Special Collection Group to take measures related to the grace of tax payment in accordance with relevant laws and directives.

#### **18. Withdrawal of a Request for the MAP Consultation**

- (1) After requesting a MAP, the applicant can withdraw the request for a MAP any time before receiving notifications referred to in 13(3) [Notification That an Initiation Will not be Proposed], 16(1) [Notification That a Mutual Agreement Has been Reached] or 17(2) [Notification That a Mutual Agreement Procedure Has been Terminated].

- (2) The withdrawal of the request for the MAP will be made by submitting “Notification of the Withdrawal of a Request for a Mutual Agreement Procedure” (Form 4) to the MAP Office.

(Note) Where the Notification of the Withdrawal of a Request for a Mutual Agreement Procedure has been mistakenly submitted to the Tax Office, the Revenue Management and Processing Group will forward it to the MAP Office without delay and notify the person who has submitted the notification of that fact.

- (3) Where the MAP Office has received a Notification of the Withdrawal of a Request for a Mutual Agreement Procedure in (2), the MAP Office will notify the competent authority of the treaty partner that the MAP consultation is being terminated because the applicant withdrew the request for the MAP. The MAP Office will notify the related NTA divisions that the request for the MAP has been withdrawn with a copy of the Notification of the Withdrawal of the Request for a Mutual Agreement Procedure. The MAP Office will also notify the NTA Collection Division of that fact with a copy of the Notification of the Withdrawal of the Request for a Mutual Agreement Procedure, if the income tax, corporation tax or local corporation tax dealt with in the MAP consultation regarding the Notification is relating to the procedures on the grace of tax payment.

- (4) Where the NTA Collection Division has received the notification pursuant to (3) from the MAP Office, the NTA Collection Division will inform the RTB Special Collection Group of that fact with a copy of the Notification of the Withdrawal of the Request for a Mutual Agreement Procedure.

#### **19. Cancellation of Document Retention Measures**

- (1) Where, after the MAP Office has required the related NTA divisions to take measures to retain documents regarding tax returns pursuant to 5(3) or 7(1), the request for a MAP has not been made, the initiation of a MAP consultation has not been proposed to the competent authority of the treaty partner, the MAP consultation has resulted in an agreement, the MAP has been terminated without reaching an agreement (including the case in which the competent authority of the treaty partner has not presented a different position on the termination of the MAP notified pursuant to 13(2); hereinafter the same in 29), or the request for the MAP has been withdrawn, the MAP Office will notify the related NTA divisions that the requirement for retention of documents regarding tax returns has been canceled.

- (2) Where a related NTA division has received the notification in (1) from the MAP Office, it will instruct the related RTB divisions to cancel the document retention measures.
- (3) Where the related RTB division has received the instructions pursuant to (2) from the related NTA divisions, it will provide the necessary instructions to the District Director of the Tax Office having jurisdiction over the place of applicant's tax payment.

### **Chapter 3: MAP Consultations**

#### **Proposed Initiation by the Competent Authority of the Treaty Partner**

#### **20. Pre-filing Consultation**

The MAP Office will accede to the request for a pre-filing consultation from an individual or a corporation prior to the applicant's request for a MAP to the competent authority of a treaty partner, and will deal with it appropriately, e.g. by giving some necessary advices. The procedures will provided for in 5 will apply thereafter.

#### **21. Procedures Applied to the Proposal of Initiation for the MAP Consultation**

- (1) Where the MAP Office has received a proposal of initiation of a MAP consultation from the competent authority of a treaty partner, the MAP Office will notify the related NTA divisions of the following information and require them to take measures to retain documents regarding tax returns, except for cases that fall within 22 to 24:
  - (a) The name of the treaty partner that has made the proposal;
  - (b) The date on which the proposal was received;
  - (c) Where the proposal is regarding taxation on a non-resident or a foreign corporation in Japan (except the case that falls under (g)), the name and address of the non-resident or the name and address of the head office or main office of the foreign corporation, the taxable years to be covered by the MAP, the date of taxation, and the name and address of the tax representative in Japan (if any has been registered);
  - (d) Where the proposal is regarding a request for a MAP made to the competent authority of the treaty partner from a resident or a domestic corporation, the name and address of the resident or the name and address of the head office or main office of the domestic corporation, the taxable years to be covered by the MAP and the date of taxation;
  - (e) Where the proposal is regarding taxation in Japan on income attributed to a permanent establishment of a non-resident or a foreign corporation located in Japan, in addition to the items provided for in (c), the name and address of the permanent establishment;
  - (f) Where the proposal is regarding transfer pricing taxation on transactions between a permanent establishment of a foreign corporation located in Japan and the foreign affiliated person of that foreign corporation, in addition to the items provided for in (c) and (d), the name and address of the foreign affiliated person;

- (g) Where the proposal is regarding a tax withheld by a withholding agent in Japan, the name and address of the withholding agent, the name and address of the non-resident or the name and address of the head office or main office of the foreign corporation that received the payment from which the tax was withheld, the character of such a payment, the time period to be covered by the MAP, etc.;
- (h) Where the proposal is for determining the resident country of an individual, the name and address of the individual, the years to be covered by the MAP, etc.; and
- (i) Other useful information.

(Note) It should be noted that in the cases falling under (h), the individual requesting a MAP may not submit the application form in Japan.

- (2) Where a related NTA division has been required by the MAP Office to take measures to retain the documents regarding tax returns as described in (1), the MAP Office will instruct the related RTB divisions not to dispose of the documents regarding the tax returns as prescribed in 5(5), even if the document retention periods for those documents have been exceeded.
- (3) Where the related RTB division has received the instruction pursuant to (2) from the related NTA divisions, the related RTB division will provide the necessary instructions to the District Director of the Tax Office in charge.

## **22. Procedures Applied to the Proposal for initiation of a MAP Consultation in Connection with Transfer Pricing Taxation, etc.**

- (1) Where a proposal for initiation of a MAP consultation from the competent authority of a treaty partner (except the proposal which is regarding a request for a MAP made to the competent authority of the treaty partner from the domestic corporation) is regarding transfer pricing taxation in relation to transactions between a domestic corporation and its foreign affiliated person, and the result of the MAP may affect the taxable profit of the domestic corporation, the MAP Office will confirm whether the domestic corporation has requested a MAP in accordance with the provisions of the applicable tax treaty.
- (2) If, as a result of the action taken pursuant to (1), it is confirmed that the domestic corporation has requested, or will request, a MAP pursuant to 6(1), the procedures provided for in Chapter 2 of this directive will apply thereafter.
- (3) If, as a result of the action taken pursuant to (1), it is confirmed that the domestic corporation has requested, or will request, a MAP to the competent authority of the treaty partner pursuant to the provisions of the tax treaty, the MAP Office will notify the related NTA divisions of the items provided for in 21(1)(a), (b), (d) and (i), and require them to take measures to retain the documents regarding tax returns. The procedures provided for in 21(2) and (3), and 26 to 29 of this directive will apply thereafter.

- (4) If, as a result of the action taken pursuant to (1), it is confirmed that the domestic corporation will not request a MAP pursuant to the provisions of the applicable tax treaty, the procedures provided for in 28 will apply thereafter.

**23. Procedures Applied to the Proposal for initiation of a MAP Consultation in Connection with the APA (Resident or Domestic Corporations)**

- (1) Where a proposal for initiation of a MAP consultation from the competent authority of a treaty partner is regarding an APA concerning a resident or a domestic corporation, the MAP Office will confirm whether the resident or the domestic corporation has requested a MAP in accordance with this directive, and has requested an APA in accordance with 6-2 of the Commissioner's Directive on the Operation of Transfer Pricing, 7-1 of the Commissioner's Directive on the Operation of Auditing, etc. for Income Attributable to Permanent Establishments or 6-1 of the Commissioner's Directive on the Operation of Auditing etc. for Various Income Attributable to Individual's Permanent Establishments.
- (2) If, as a result of the action taken pursuant to (1), it is confirmed that the resident or the domestic corporation has requested, or will request, a MAP pursuant to 6(1) and an APA, the procedures provided for in Chapter 2 of this directive will apply thereafter.
- (3) If, as a result of the action taken pursuant to (1), it is confirmed that the resident or the domestic corporation will not request either a MAP pursuant to 6(1) or an APA, the procedures provided for in 28 will apply thereafter.

**24. Procedures Applied to the Proposal for initiation of a MAP Consultation in Connection with the APA (Non-Resident or Foreign Corporations)**

- (1) Where a proposal for initiation of a MAP consultation from the competent authority of a treaty partner is regarding an APA concerning the permanent establishment of a non-resident or a foreign corporation located in Japan, the MAP Office will confirm whether or not the non-resident or the foreign corporation has requested an APA in accordance with 6-2 of the Commissioner's Directive on the Operation of Transfer Pricing, 6-1 of the Commissioner's Directive on the Operation of Auditing, etc. for Income Attributable to Permanent Establishments or 5-1 of the Commissioner's Directive on the Operation of Auditing, etc. for Various Income Attributable to Individual's Permanent Establishments.
- (2) If, as a result of the action taken pursuant to (1), it is confirmed that the non-resident or the foreign corporation has requested, or will request, an APA, the MAP Office will notify the related NTA divisions of the items provided for in 21(1) (a) and (b) and the name and address of the permanent establishment, and ask them to take measures to retain the documents regarding tax returns. The procedures provided for in 21(2) and (3), and 26 to 29 will apply thereafter.

- (3) If, as a result of the action taken pursuant to (1), it is confirmed that the non-resident or the foreign corporation will not request an APA concerning the permanent establishment, the procedures provided for in 28 will apply thereafter.

## **25. Notification to Withholding Agents after Receiving the Proposal for the MAP Consultation in Connection with Withholding Income Taxes**

Where a proposal for initiation of a MAP consultation from the competent authority of a treaty partner is regarding a tax withheld by a withholding agent in Japan, the MAP Office will notify the withholding agent of the fact that the proposal for initiation of a MAP consultation has been made by the competent authority of the treaty partner.

## **26. Submission of Documents, etc.**

- (1) The MAP Office will, as necessary, request a person who was subject to taxation that has resulted in a MAP consultation to submit documents and to provide explanations for the documents.

Where a person who was subject to taxation that has resulted in a MAP consultation does not cooperate to submit documents considered necessary for the MAP consultation, and if that person has been granted the grace of tax payment and it is considered justifiable to cancel the grace of tax payment because such non-cooperation of that person falls under 42(15)(a)(ii), the MAP Office will inform the RTB Special Collection Group via the NTA Collection Division that cancellation of the grace of tax payment is justifiable.

- (2) Where the MAP Office has requested the submission of documents prescribed in (1), the MAP Office will record that fact and the status of the subsequent submission of documents.
- (3) The MAP Office will, as necessary, ask for Japanese translations to be attached for documents submitted pursuant to (1) in a foreign language.
- (4) Where the proposal for a MAP request from a competent authority of a treaty partner has been made on the ground that taxation not in accordance with the provisions of a tax treaty has been occurred in Japan, the MAP Office will require the related NTA divisions to share the documents explaining the details of taxation (if the proposal for a MAP consultation has been made on the ground that taxation not in accordance with the provision of the tax treaty will be occurred in Japan, an outline of the relevant facts regarding the taxation).

## **27. Notification of the Mutual Agreement**

- (1) Where a mutual agreement has been reached as a result of a MAP consultation, the MAP Office will notify the related NTA divisions of the date of the agreement and contents of the agreement (The MAP Office will also inform the NTA Collection Division of the date and contents of the agreement, if the individual tax, corporation tax or local corporation tax dealt with in the MAP consultation regarding the notification is relating to the procedures on the grace of tax payment.).

- (2) Where the related NTA division and the NTA Collection Division have received the notification pursuant to (1) from the MAP Office, the related NTA division and the NTA Collection Division will instruct the related RTB divisions and the RTB Special Collection Group to take measures for implementing the mutual agreement and measures related to the grace of tax payment, in accordance with the provisions of the applicable tax treaty and relevant laws and regulations.
- (3) Where a related RTB division has received the instructions pursuant to (2) from related NTA divisions, the related RTB division will give the instructions necessary for taking measures for implementing the mutual agreement to the District Director of the Tax Office.
- (4) Where a mutual agreement has been reached on a MAP consultation regarding the tax withheld by a withholding agent in Japan, the MAP Office will explain the contents of the agreement to the withholding agent.
- (5) With regard to the procedures for refunding, all or a part of the income tax and special income tax for reconstruction withheld by a withholding agent in Japan in accordance with a mutual agreement, where the income tax and special income tax for reconstruction were voluntarily withheld by the withholding agent, a refund will be provided, in principle, based on the Request for a Refund of Overpaid Withholding Income Taxes and Special Income Tax for Reconstruction submitted by the withholding agent. In such case, the MAP Office will request the withholding agent to submit a Request for a Refund of Overpaid Withholding Income Taxes and Special Income Tax for Reconstruction. Where the taxes were withheld on receipt of notification of the withholding income tax and special income tax for reconstruction, the refund shall be made to the withholding agent without requesting a Request for a Refund of Overpaid Withholding Income Taxes and Special Income Tax for Reconstruction to the withholding agent.

## **28. Termination of the MAP**

- (1) The MAP Office will propose termination of the MAP consultation to the competent authority of the treaty partner where:
  - (a) it has been determined that the subject of the proposed MAP consultation is not covered by a MAP consultation under the applicable tax treaty;
  - (b) it has been confirmed as a result of the action taken pursuant to 22(1) that the domestic corporation will not request a MAP under the provisions of the applicable tax treaty;
  - (c) it has been confirmed as a result of the action taken pursuant to 23(1) that the resident or the domestic corporation will not request a MAP pursuant to 6(1) or an APA;
  - (d) it has been confirmed as a result of the action taken pursuant to 24(1) that the non-resident or the foreign corporation will not request an APA concerning its permanent establishment located in Japan;
  - (e) in the case where the proposal for initiation of a MAP consultation from the competent authority of the treaty partner, the request for an APA falls within the case prescribed in 6-14(1) of the Commissioner's Directive on the Operation of Transfer Pricing, 6-13(1) of the

Commissioner's Directive on the Operation of Auditing, etc. for Income Attributable to Permanent Establishments or 5-13(1) of the Commissioner's Directive on the Operation of Auditing, etc. for Various Income Attributable to Individual's Permanent Establishments .

- (f) the person who was subject to the taxation that has resulted in the MAP consultation does not cooperate in providing the documents necessary for the MAP consultation;
- (g) it is impossible to gather the documents necessary for a MAP consultation because a significant amount of time has elapsed since the taxation in Japan or in the treaty partner, or due to other reasons;
- (h) in the case where the proposal for initiation of a MAP consultation is regarding an APA, it is recognized that the continuation of the MAP consultation will not result in an appropriate resolution for the reason that a discrepancy which would seriously affect the mutual agreement exists between the request for an APA prescribed in 24(1) and a request for an APA made to the competent authority of the treaty partner; or
- (i) it is recognized that the continuation of the MAP consultation will not result in an appropriate solution by other reasons in (h).

(Note) For instance, the case which falls within (i) is illustrated as follows.

- 1 where it is found as difficult for the treaty partner to ensure the implementation of MAP agreement due to its domestic laws or administrative practice such as the absence of an APA program or procedure.
  - 2 where, with respect to an APA case, the competent authority of a treaty partner has not sent any position paper, which presents its view on the method of calculation of arm's length price and other related items thereof, to the MAP Office by the date on which one year period has elapsed since the date on which the MAP Office presented its position paper to the competent authority notwithstanding the competent authority has received written requests repeatedly from the MAP Office in the period.
- (2) Where the competent authority of the treaty partner has accepted a proposal for termination of the MAP consultation made from the MAP Office pursuant to (1), or where the MAP Office has accepted a proposal from the competent authority of a treaty partner to terminate a MAP consultation, the MAP Office will notify the related NTA divisions that the MAP has been terminated (It will also inform the NTA Collection Division of that fact, if the individual tax, corporation tax or local corporation tax dealt with in the MAP consultation regarding the notification is relating to the procedures on the grace of tax payment.).
  - (3) Where the NTA Collection Division has received the notification pursuant to (2) from the MAP Office, the NTA Collection Division will instruct the RTB Special Collection Group to take measures related to the grace of tax payment, in accordance with relevant laws and regulations.
  - (4) Where the MAP terminated is regarding a tax withheld by a withholding agent in Japan, the MAP Office will notify the withholding agent that the MAP consultation has been terminated.

## **29. Cancellation of Document Retention Measures**

- (1) Where, after the MAP Office has required the related NTA divisions to take measures to retain documents regarding tax returns pursuant to 21(1), a mutual agreement has been reached or the MAP has been terminated without reaching a mutual agreement, the MAP Office will notify the related NTA divisions that the requirement for retention of documents regarding tax returns has been canceled.
- (2) Where a related NTA division has received the notification pursuant to (1) from the MAP Office, it will instruct the related RTB divisions to cancel the document retention measures.
- (3) Where a related RTB division has received the instructions pursuant to (2) from a related NTA division, it will provide the necessary instructions to the District Director of the Tax Office in charge.

## **Chapter 4: The Proposal for Initiation of a MAP Consultation Without a MAP Request**

### **30. Proposal for Initiation of a MAP Consultation Not Based on a MAP Request**

When necessary, the MAP Office will propose initiation of a MAP consultation to the competent authority of a treaty partner without receiving an Application for the Mutual Agreement Procedure prescribed referred to in 6(1).

(Note) A proposal for initiation of a MAP consultation may be made to the competent authority of a treaty partner without a request referred to in 6(1), for example;

- (a) in order to revoke a previously reached mutual agreement with the competent authority of a treaty partner due to the fact, such as that the mutual agreement was made based on the documents submitted by an applicant which contained false information;
- (b) in order to re-negotiate the previously reached mutual agreement on APA with the competent authority of a treaty partner due to the fact that a critical assumption included in the mutual agreement has been breached;
- (c) in order to cancel a previously reached mutual agreement on an APA with the competent authority of a treaty partner due to the fact that any reason for cancellation of an APA which specified in 6-21 of the Commissioner's Directive on the Operation of Transfer Pricing, 6-20 or 7-20 of the Commissioner's Directive on the Operation of Auditing, etc. for Income Attributable to Permanent Establishments, or, 5-20 or 6-20 of the Commissioner's Directive on the Operation of Auditing, etc. for Various Income Attributable to Individual's Establishments has arisen.

### **31. Measures for Retaining Documents Regarding Tax Returns**

- (1) Where the MAP Office has proposed initiation of a MAP consultation pursuant to 30, the MAP Office will notify the related NTA divisions of that fact with an outline of its proposal, and will require them to take measures to retain the documents regarding tax returns.

- (2) Where a related NTA division has been required to take measures to retain the documents regarding tax returns by the MAP Office pursuant to (1), the related NTA division will provide instructions to the related RTB divisions pursuant to 5(5).
- (3) Where a related RTB division has received the instructions pursuant to (2) from the related NTA division, the related RTB division will provide the necessary instructions to the District Director of the Tax Office in charge of the resident, etc. concerned with the proposal for initiation of a MAP consultation.
- (4) The procedures provided for in 26 to 29 will apply mutatis mutandis to a MAP consultation initiated pursuant to 30.

**32. Notification That a MAP consultation Has Been Proposed, etc.**

- (1) Where the MAP Office has proposed initiation of a MAP consultation to the competent authority of a treaty partner pursuant to 30, the MAP Office will notify the following items to the resident, etc. subject to taxation that has resulted in a MAP consultation or the resident, etc. requesting for an APA covered in a MAP consultation:
  - (a) The date of the proposal of initiation of a MAP consultation;
  - (b) The name of the treaty partner to which the proposal was made;
  - (c) The contents of the proposal;
  - (d) The reason for the proposal; and
  - (e) Other useful information.
- (2) Where a mutual agreement has been reached on a MAP consultation, the MAP Office will notify the contents of the MAP agreement to the resident, etc. referred to in (1).
- (3) Where a MAP consultation has been terminated without reaching a mutual agreement, the MAP Office will notify that fact to the resident, etc. referred to in (1).

## **Chapter 5: Arbitration**

**33. Arbitration Procedure**

The MAP Office will deal with the arbitration procedure pursuant to the applicable tax treaty, Ministerial Ordinance (Income Tax treaty) and implementing arrangement regarding arbitration procedure.

**34. Procedures Where the MAP Based on an Applicable Tax treaty That Contains a Provision for Arbitration Procedure Has Been Requested**

Where a MAP under the applicable tax treaty that contains a provision for arbitration procedure has been requested, the MAP Office will follow, in addition to the procedures provided for in Chapter 2 of this directive, the procedures below.

- (1) Where the MAP Office has received the Application for the Mutual Agreement Procedure as prescribed in 6(1), the MAP Office will promptly inform the competent authority of the treaty partner that it has received the request for a MAP.
  - (2) The MAP Office will request the competent authority of the treaty partner to present the documentation which it finds to be necessary for determining whether the request is justified, except where the request for the MAP is regarding taxation in Japan.
  - (3) The MAP Office will confirm the starting date of the MAP consultation with the competent authority of the treaty partner and notify the applicant of the starting date of the MAP consultation, in accordance with the applicable implementing arrangement regarding an arbitration procedure.
- (Note) It should be noted that the starting date of a MAP consultation is the date on which the MAP Office has presented a case to the competent authority of a treaty partner, and a case will be considered to have been presented only when the specific information provided for in the implementing arrangement for the arbitration procedure has been presented.

### **35. Procedures Where Initiation of a MAP Consultation Based on the Applicable Tax treaty That Contains a Provision for the Arbitration Procedure Has Been Proposed**

Where initiation of a MAP consultation under the applicable tax treaty that contains a provision for the arbitration procedure has been proposed, the MAP Office will follow, in addition to the procedures provided for in Chapter 3 of this directive, the procedures below.

- (1) The MAP Office will request the competent authority of the treaty partner to present the documentation which it finds to be necessary for determining whether the proposal is justified, except where the proposal is regarding taxation in Japan.
  - (2) The MAP Office will confirm the starting date of the MAP consultation with the competent authority of the treaty partner, in accordance with the applicable implementing arrangement for the arbitration procedure.
- (Note) It should be noted that the starting date of a MAP consultation is the date on which a case has been presented to the MAP Office by the competent authority of a treaty partner, and the case will be considered to have been presented only when the specific information provided for in the implementing arrangement for the arbitration procedure has been presented.

### **36. Requests for Arbitration Procedure**

Requests for arbitration procedure can be made in accordance with paragraph 3 of Article 12 of the Ministerial Ordinance (Income Tax treaty) under the provisions of an applicable tax treaty.

### **37. Pre-filing Consultation**

The MAP Office will accede to a request for a pre-filing consultation regarding a request for arbitration procedure from an individual or a corporation who has filed a request for a MAP prior to

requesting an arbitration procedure, and will deal with it appropriately, e.g. by giving some necessary advices.

### **38. Procedures for Requesting the Arbitration Procedure**

- (1) Requests for an arbitration procedure will be made by submitting “Application for the Arbitration Procedure” (Form 6) to the MAP Office.

(Notes) 1 Where the Application for the Arbitration Procedure has been mistakenly submitted to a Tax Office, the Revenue Management and Processing Group will forward the submitted Application to the MAP Office and notify the applicant of that fact.

- 2 It should be noted that a request for an arbitration procedure can only be made if a mutual agreement has not been reached within the period of time prescribed in the applicable tax treaty from the starting date of the MAP consultation referred to in 34(3).

- (2) The MAP Office will send a copy of the request and the attached documents to the competent authority of a treaty partner within 10 days from the day following the date of receipt of the Application for the Arbitration Procedure.

### **39. Notification to the Person Who Made the Request for the Arbitration Procedure, etc.**

- (1) The MAP Office will notify the individual or the corporation that is the person directly affected by the case (the person whose taxable profits in Japan or in the treaty partner may be directly affected by the mutual agreement; hereinafter the same in 40) of the matters set forth in the following:

- (a) where unresolved issues to be submitted to arbitration have been decided, the unresolved issues to be submitted to the arbitration;
- (b) where the period of an arbitration procedure has been extended, the reason for the extension and the extended period of the arbitration procedure;

(Note) The period of an arbitration procedure can be extended, for example:

- (a) where the failure to resolve an issue within the period referred to in the applicable tax treaty is mainly attributable to the failure of the person directly affected by the case to provide relevant information in a timely manner, and the appointment of arbitrators is postponed for a period of time corresponding to the delay in providing that information;
- (b) where the applicant requests that a MAP consultation be suspended for the reasons such as the applicant giving a priority to an administrative appeal or litigation, and the appointment of arbitrators is postponed for a period of time corresponding to the suspended period;
- (c) where the competent authority of Japan, the competent authority of the treaty partner and the person directly affected by the case agree to extend the period of the arbitration procedure.

- (c) where the arbitration procedure has been terminated before an arbitration decision is provided, the reasons for the termination.

(Note) The arbitration procedure can be terminated before an arbitration decision, for example;

- (a) where a mutual agreement has been reached on a MAP consultation;
- (b) where a decision on the unresolved issues submitted to arbitration has been rendered by a court or administrative tribunal in Japan or in equivalent in the treaty partner.

- (2) Where the MAP Office has received a notification from the competent authority of a treaty partner that a request for an arbitration procedure was made in the treaty partner, the MAP Office will notify the individual or the corporation that is the person directly affected by the case of the receipt of such notification and the date of the receipt, in addition to matters prescribed in (1).

#### **40. Procedures for the Mutual Agreement to Implement the Arbitration Decision**

15 and 16 or 27 will apply for reaching a mutual agreement in order to implement the arbitration decision.

#### **41. Withdrawal of the Request for the Arbitration Procedure**

- (1) After requesting an arbitration procedure, the applicant can withdraw the request for the arbitration procedure any time before receiving the notification described in 16(1) [Notification of a Mutual Agreement].

- (2) Withdrawal of a request for an arbitration procedure will be made by submitting “Notification of the Withdrawal of a Request for Arbitration Procedure” (Form 7) to the MAP Office.

(Note) Where the Notification of the Withdrawal of a Request for an Arbitration Procedure has been mistakenly submitted to a Tax Office, the Revenue Management and Processing Group will forward the submitted Notification to the MAP Office and notify the applicant of that fact.

- (3) It should be noted that where the person who made a request for an arbitration procedure withdraw the request for the MAP as well as the request for the arbitration procedure, it is sufficient that the person submits a Notification of the Withdrawal of a Request for a Mutual Agreement Procedure prescribed in 18(2), and a Notification of the Withdrawal of a Request for Arbitration Procedure need not be submitted.
- (4) Where the MAP Office has received a Notification of the Withdrawal of the Request for the Arbitration Procedure pursuant to (2), the MAP Office will notify the competent authority of the treaty partner that the arbitration procedure has been terminated due to the withdrawal of the request for an arbitration procedure.

### **Chapter 6: Administrative Procedures on**

## **Grace of Tax Payment and Grace of Tax Collection (of Local Taxes)**

### **42. Grace of Tax Payment**

(1) The District Director of the Tax Office in charge (in the case where the collection affairs for national taxes on the individual or the corporation has been handed over to the Regional Commissioner of the Regional Taxation Bureau according to paragraph 3 of Article 43 [Tax Offices in Charge of Collection of National Taxes] of the Act on General Rules for National Taxes, the Regional Commissioner of the Regional Taxation Bureau in charge; the same in 42) may grant, subject to the application for such grace of tax payment from the individual or the corporation that has requested a MAP, a grace of tax payment up to the following amount set forth in the following matters;

(a) Where an individual has requested a MAP pursuant to 3(1) or has requested a MAP to the competent authority of a treaty partner;

The amount calculated pursuant to the method specified by paragraph 1 of Article 25-18-4 [Application Procedures, etc. for a Grace of Tax Payment Pertaining to Special Provisions for Taxation on Internal Dealings] of the Order for Enforcement of the Act on Special Measures Concerning Taxation (including the case where it is applied mutatis mutandis pursuant to paragraph 5 of Article 26-28-7 of the said Order [Special Provisions for Calculation of Foreign Income]), as amount of a relevant income tax to be paid as a result of taxation listed in item 1 of paragraph 22 of Article 40-3-3 [Special Provisions for Taxation on Internal Dealings of Non-residences] of the Act on Special Measures Concerning Taxation (including the cases where it is applied mutatis mutandis pursuant to paragraph 13 of Article 41-19-5 of the said Act; the same will apply hereinafter) and additional tax pursuant to Article 69 [Tax Items for Additional Tax] of the Act on General Rules for National Taxes ;

(b) Where a corporation has requested a MAP pursuant to 3(1) or has requested a MAP to the competent authority of a treaty partner;

The amount calculated pursuant to the method specified by paragraph 1 of Article 39-12-2 [Application Procedures, etc. for a Grace of Tax Payment Pertaining to Special Provisions for Taxation on Transactions with Foreign Affiliated Persons] of the Order for Enforcement of the Act on Special Measures Concerning Taxation (including the case where it is applied mutatis mutandis pursuant to paragraph 6 of Article 39-12-3 [Special Provisions for Taxation on Internal Dealings of Foreign corporation] and paragraph 4 of Article 39-33-5 [Special Provisions for Calculation of Foreign Income] of the said Order), as the amount of a relevant corporation tax to be paid as a result of taxation listed in item 1 of paragraph 27 of Article 66-4 of the Act on Special Measures Concerning Taxation (including the cases where it is applied mutatis mutandis pursuant to paragraph 14 of Article 66-4-3 and paragraph 13 of Article 67-18 of the said Act; the same shall apply hereinafter) and a relevant local corporation tax to be paid as a result of taxation listed in item 3 of paragraph 27 of Article 66-4 of the said Act (including the cases where it is

applied mutatis mutandis pursuant to paragraph 14 of Article 66-4-3, and paragraph 13 of Article 67-18 of the said Act; the same shall apply hereinafter), and additional tax to both of them pursuant to Article 69 [Tax Items for Additional Tax] of the Act on General Rules for National Taxes..

(Note) The treatment provided for in 42 will also apply to the cases where the provisions of paragraph 1 of Article 40-3-4 are replaced pursuant to the provisions of paragraph 1 of Article 33 [Special Provisions for Application of the Income Tax Act regarding Special Income Tax for Reconstruction] of the Reconstruction Funding Act, or where the provisions of Article 66-4-2 of the Act on Special Measures Concerning Taxation apply mutatis mutandis to the amount of special corporation tax for reconstruction and additional tax to the special corporation tax for reconstruction to be paid as a result of taxation under item 1 of paragraph 8 of Article 63 of the Reconstruction Funding Act, according to paragraph 12 of Article 63 [Special Provisions for Application of the Corporation Tax Act regarding Special Corporation Tax for Reconstruction] of the Reconstruction Funding Act.

(2) Requirements for a Grace of Tax Payment

A request for a grace of tax payment will be approved in accordance with the Act on Special Measures Concerning Taxation if all of the following requirements are met:

- (a) The individual or corporation who desires enjoying a grace of tax payment has been subject to taxation under item 1 of paragraph 22 of Article 40-3-3 or items 1 and 3 of paragraph 27 of Article 66-4 of the Act on Special Measures Concerning Taxation;
- (b) The individual or corporation who desires enjoying a grace of tax payment has requested a MAP;
- (c) The amount of income tax or corporation tax and local corporation tax regarding the application for the grace of tax payment (hereinafter referred to as the “income tax, etc. related to the grace of tax payment”) resulted from taxation in (a) is the subject of the consideration with a treaty partner in a MAP requested in (b);
- (d) The applicant does not have any delinquent national taxes other than the income tax, etc. related to the grace of tax payment; and
- (e) In principle, the applicant deposits a security equivalent to the amount relating to the grace of tax payment.

(3) Application Procedures

- (a) The applicant (an individual or a corporation; hereinafter the same in 42) who applies for a grace of tax payment shall submit two sets (the original and a copy) of “Application for the Grace of Tax Payment” (Form 5-1) stating the income tax, etc. related to the grace of tax payment and other necessary information with two sets of the attachments prescribed in (4). The applicant shall also deposit a security prescribed in (5) and (6).

(Note) It should be noted that an application for a grace of tax payment can be made to the income tax, etc. related to the grace of tax payment only after the taxation under item 1 of paragraph 22 of Article 40-3-3 or items 1 and 3 of paragraph 27 of Article 66-4 of the Act on Special Measures Concerning Taxation has been made.

(b) The original Application for the Grace of Tax Payment (including a set of the attachments prescribed in (4)) and a document related to a security will be forwarded to the Collection Group, and a copy of that Application (with a set of the attachments prescribed in (4)) will be forwarded to the Individual Management Group or the Corporation Management Group. However, where the collection affairs for national taxes on the domestic corporation or foreign corporation have already been handed over to the Regional Commissioner of the Regional Taxation Bureau and the Application for the Grace of Tax Payment (including a set of the attachments in (4)) has been submitted to the Regional Commissioner of the Regional Taxation Bureau, the original Application for the Grace of Tax Payment and the document related to a security will be forwarded to the RTB Special Collection Group.

(4) Attachments

Two copies of the following documents shall be attached to the Application for the Grace of Tax Payment:

(a) A document explaining that a request for a MAP under 3(1) has been made to the competent authority of Japan or that a request for a MAP has been made to the treaty partner (in the case where such a request has been made to the competent authority of the treaty partner, Japanese translation of the application should be attached); and

(b) The following documents set forth in the following cases:

(i) Where the applicant is an individual;

A document explaining that the income tax, etc. related to the grace of tax payment are the amount of income tax resulted from taxation under item 1 of paragraph 22 of Article 40-3-3 of the Act on Special Measures Concerning Taxation and the taxation is covered by the MAP consultation with the treaty partner that the applicant has requested.

(ii) Where the applicant is a corporation;

A document explaining that the income tax, etc. related to the grace of tax payment are corporation tax resulted from taxation under item 1 of paragraph 27 of Article 66-4 of the said Act and local corporation tax resulted from taxation under item 3 of paragraph 27 of Article 66-4 of the said Act and the taxation is covered by the MAP consultation with the treaty partner that the applicant has requested.

(5) Depositing of Security

An applicant shall, except for the cases below, deposit a security equivalent to the amount related to the grace of tax payment along with the submission of the Application for the Grace of Tax Payment. Where the applicant has had assets seized for delinquent income tax, etc. related to the grace of tax payment, the amount of the security shall not exceed the amount calculated by deducting

the value of the assets (limited to the amount to be appropriated to national taxes) from the amount of the grace of tax payment:

- (a) where the amount of income tax, etc. related to the grace of tax payment is 1,000,000 yen or less;
- (b) where the period of the grace of tax payment is within three months;
- (c) where the applicant is in special circumstances and not able to deposit a security.

(Note) It should be noted that the value of the seized assets to be deducted from the amount of the grace of tax payment includes the value of assets subjected to the measures equivalent to seizure and the value of assets deposited as the security by the assistance in tax collection or measures of conservancy (refer to paragraph 6 of Article 46 [Requirements for Grace of Tax Payment, etc.] of the Act on General Rules for National Taxes).

(6) Kinds of Security and Procedures for Depositing Security

(a) Kinds of Security

The Security for the grace of tax payment shall be the kinds of security listed in each item of Article 50 [Kinds of Security] of the Act on General Rules for National Taxes as follows (Refer to Section 2 of Chapter 4 of the Commissioner's Directive on the Handling of the Grace of Tax Payment, etc. for more detailed information):

- (i) Government bonds and local Government bonds;
- (ii) Corporate bonds (including bonds issued by corporations established under special acts) and other securities that the District Director of the Tax Office having jurisdiction over the place for the tax payment of the applicant approves as reliable;
- (iii) Land;
- (iv) Buildings, living trees, and registered vessels, aircrafts, propeller planes, automobiles and construction machines that have been insured;
- (v) Railway foundations, factory foundations, mining foundations, streetcar foundations, canal foundations, fishery foundations, port transportation foundations, road transportation foundations and tourist foundations;
- (vi) A guarantee by a guarantor whom the District Director of the Tax Office having jurisdiction over the place for the tax payment of the applicant approves as reliable;
- (vii) Money.

(b) Procedures for Depositing the Security

When the applicant deposits the security, the applicant shall submit, in addition to the Security Deposit Form (Form 5-2), the documents specified in Section 2 of Chapter 4 of the Commissioner's Directive on the Handling of the Grace of Tax Payment, etc. The Collection Group or the RTB Special Collection Group will, when it has received the security and related documents, record the fact of the receipt and the details of the security, etc. in the security ledger prescribed in the Commissioner's Directive on the Handling of the Grace of Tax Payment, etc.

- (7) Handing over Collection Affairs, etc. to the Regional Commissioner of the Regional Taxation Bureau
- (a) Where the Collection Group has received the Application for the Grace of Tax Payment, etc. prescribed in (3)(b), the Collection Group will promptly require the Revenue Management and Processing Group to take measures to hand over the collection affairs of the national taxes on the applicant to the RTB Special Collection Group pursuant to paragraph 3 of Article 43 of the Act on General Rules for National Taxes, and to proceed with other affairs related to the grace of tax payment. The Revenue Management and Processing Group will hand over the collection affairs and proceed with other affairs related to the grace of tax payment promptly.
  - (b) The Revenue Management and Processing Group will forward the original Application for the Grace of Tax Payment (including a set of the attachments prescribed in (4)) and the documents related to the deposit of security, etc. with regard to the collection affairs asked to hand over to the RTB Special Collection Group in (a).
- (8) Sending of Documents Relating to the Grace of Tax Payment to the MAP Office.
- (a) The Individual Management Group or the Corporation Management Group will send a copy of the Application for the Grace of Tax Payment (including a set of attachments prescribed in (4)) which it has received pursuant to (3)(b) to the MAP Office.
  - (b) Where the Application for the Grace of Tax Payment, etc. is submitted to the Regional Commissioner of the Regional Taxation Bureau, the RTB Special Collection Group will keep the original Application for the Grace of Tax Payment (including a set of attachments prescribed in (4)) and the documents related to the security, and send a copy of the Application for the Grace of Tax Payment (including a set of attachments prescribed in (4)) to the MAP Office via the NTA Collection Division.
- (9) Notice of the Amount Subject to the Grace of Tax Payment
- (a) Where the Individual Management Group, the Corporation Management Group or the RTB Large Enterprise Examination Division (the Management Division of the Large Enterprise Examination and Criminal Investigation Department of the RTB (or of the Management Division of the First Large Enterprise Department in the case of the Tokyo Regional Taxation Bureau and Osaka Regional Taxation Bureau; or of the Management Division of the Large Enterprise Department in the case of the Nagoya Regional Taxation Bureau) and the Large Enterprise Examination Division of the Okinawa Regional Taxation Office; hereinafter the same in 43 and 44) has found in an examination (an examination prescribed in 1-1 of the Relevant Commissioner's Directives to Chapter 7-2 ["Examination on National Taxes"] of the Act on General Rules for National Taxes) that an individual or a corporation has its intention to apply for a grace of tax payment, the Group will notify the RTB Special Collection Group and the related NTA divisions (in the case where the Individual Management Group notifies the related NTA divisions, via the RTB Individual Taxation Division (the Individual Taxation Division of the First Taxation Department of the RTB (the Individual Taxation Division of the Taxation Department,

in the case of the Kanazawa Regional Taxation Bureau, Takamatsu Regional Taxation Bureau, and Kumamoto Regional Taxation Bureau) and the Individual Taxation Division of the Okinawa Regional Taxation Office; the same will apply hereinafter), in the case where the Corporation Management Group notifies the related NTA divisions, via the RTB Corporation Taxation Division (the Corporation Taxation Division of the Second Taxation Department of the RTB (the Corporation Taxation Division of the Taxation Department, in the case of the Kanazawa Regional Taxation Bureau, Takamatsu Regional Taxation Bureau, and Kumamoto Regional Taxation Bureau) and the Corporation Taxation Division of the Okinawa Regional Taxation Office; the same will apply hereinafter)) of the amount for which a grace of tax payment may be granted.

(b) Where the related NTA division (limited to the Individual Taxation Division or the Corporation Taxation Division of the Taxation Department or the Examination Division of the Large Enterprise Examination and Criminal Investigation Department of the National Tax Agency; the same will apply hereinafter) has received the notification pursuant to (a) from the related RTB divisions (limited to the RTB Large Enterprise Examination Division, the RTB Individual Taxation Division or the RTB Corporation Taxation Division; the same will apply hereinafter), the related NTA division will notify the MAP Office of the amount for which a grace of tax payment may be granted.

(c) Where the MAP Office has received a copy of the Application for the Grace of Tax Payment, etc. pursuant to (8)(a) or (b), it may inquire, as necessary, of the related NTA divisions about the amount for which a grace of tax payment may be granted.

(d) Where the related NTA division has received an inquiry pursuant to (c) from the MAP Office, the related NTA division will instruct the RTB Large Enterprise Examination Division, the Individual Management Group (via the RTB Individual Taxation Division) or the Corporation Management Group (via the RTB Corporation Taxation Division) to notify the related NTA divisions (where the Individual Management Group notifies the related NTA division, via the RTB Individual Taxation Division, and where the Corporation Management Group notifies the related NTA division, via the RTB Corporation Taxation Division) and the RTB Special Collection Group of the amount for which a grace of tax payment may be granted, and will notify the MAP Office of the amount for which the grace of tax payment may be granted in connection with that notification.

(10) Confirmation, etc. of a Request for a MAP

The MAP Office will confirm whether the applicant has made a request for a MAP. Where it is anticipated that the applicant has made a request for a MAP to the competent authority of the treaty partner according to the provisions of an applicable tax treaty, the MAP Office will inquire the competent authority of the treaty partner whether a request for a MAP has been made regarding the income tax, etc. related to the grace of tax payment and will check the situation thereafter in a timely manner.

(Note) Whether or not a request for a MAP regarding the income tax, etc. related to the grace of tax payment has been made in the treaty partner will be decided, in principle, by a proposal for initiation of a MAP consultation from the treaty partner.

(11) Examination Concerning Requirements for a Grace of Tax Payment

- (a) Where the RTB Special Collection Group has received the notification pursuant to (9), the RTB Special Collection Group will examine whether the application for the grace of tax payment meets all of the requirements prescribed in (2), based on the submitted Application for the Grace of Tax Payment (including attachments prescribed in (4)) and the documents related to the deposited security.

The valuation of the security will be made according to Section 2 of Chapter 4 of the Commissioner's Directive on the Handling of the Grace of Tax Payment, etc.

- (b) Where the MAP Office has received a copy of the Application for the Grace of Tax Payment pursuant to (8)(a) or (b), the MAP Office will confirm whether the application meets the requirements prescribed in (2)(a) to (c), and inform the RTB Special Collection Group of that fact via the NTA Collection Division.

(12) Approval for the Grace of Tax Payment

- (a) Where an application for a grace of tax payment proves to meet all of the requirements prescribed in (2) as a result of the review made pursuant to (11), the RTB Special Collection Group will grant a grace of tax payment of the income tax, etc. related to the grace of tax payment. In this case, the RTB Special Collection Group will inform the applicant of the fact that the grace of tax payment is granted, the amount for which the grace of tax payment is granted and other necessary matters by Form 5-3 and if there are the guarantors and third party mortgagors or pledgers, inform them of the fact that the grace of tax payment is granted by Form 5-4.

Where the amount of income tax or corporation tax and local corporation tax, and additional taxes to those taxes stated in the Application for the Grace of Tax Payment exceeds the amount which the related RTB divisions notified pursuant to (9) as the amount for which the grace of tax payment may be granted, the grace of tax payment will be limited to the amount for which the grace of tax payment may be granted referred to in (9).

- (b) Where (a) applies, the RTB Special Collection Group will notify the related RTB divisions and the MAP Office (via the NTA Collection Division) of that fact.
- (c) Where a related RTB division has received the notification pursuant to (b), this related RTB division will notify the related NTA divisions (where the related division is the RTB Individual Taxation Division, that related RTB division will notify the Individual Management Group; where the related division is the RTB Corporation Taxation Division, that related RTB division will notify the Corporation Management Group as well) of that fact.

(13) Period of the Grace of Tax Payment

The period of the grace of tax payment will be a period from the day following the due date for payment (where the date of the application for a grace of tax payment is later than the due date, the day following the day of the application) of income tax resulting from taxation under item 1 of paragraph 22 of Article 40-3-3 of the Act on Special Measures Concerning Taxation or corporation tax resulting from taxation under item 1 of paragraph 27 of Article 66-4 of the said Act and local corporation tax resulting from taxation under item 3 of paragraph 27 of Article 66-4 of the said Act to the day on which one month elapses from the day following the date of the correction made according to the mutual agreement reached with the competent authority of the treaty partner (where the case falls under one of the following, one month after the day following the date of the Commissioner's notification of the fact) (hereinafter referred to as the "period of the grace of tax payment"):

- (a) Where the Commissioner proposed termination of the MAP consultation because it considered that no agreement would be reached even if the MAP consultation was continued and the competent authority of the treaty partner has agreed with its proposal.
  - (b) Where the competent authority of the treaty partner proposed termination of the MAP consultation because it considered that no agreement would be reached even if that the MAP consultation was continued, and the Commissioner has agreed with its proposal.
    - (c) Where a mutual agreement reached does not change the amount of income tax resulting from taxation under item 1 of paragraph 22 of Article 40-3-3 of the Act on Special Measures Concerning Taxation or corporation tax resulting from taxation under item 1 of paragraph 27 of Article 66-4 of the said Act and local corporation tax resulting from taxation under item 3 of paragraph 27 of Article 66-4 of the said.
- (14) Non-approval of the Grace of Tax Payment
- (a) Where an application for a grace of tax payment does not meet the requirements prescribed in (2), the RTB Special Collection Group will not grant a grace of tax payment of the income tax, etc. In this case, the RTB Special Collection Group inform the applicant that the grace of tax payment is not granted by Form 5-5 and if there are the guarantors and third party mortgagors or pledgers, inform them of the same by Form 5-6.
  - (b) Where (a) applies, the RTB Special Collection Group will notify the related RTB divisions and the MAP Office (via the NTA Collection Division) of that fact.
  - (c) Where the related RTB division has received the notification pursuant to (b), this related RTB division will notify the related NTA divisions (where the related division is the RTB Individual Taxation Division, that related RTB division will inform the Individual Management Group; where the related division is the RTB Corporation Taxation Division, that related RTB division will inform the Corporation Management Group as well) of that fact.
- (15) Cancellation of the Grace of Tax Payment
- (a) The RTB Special Collection Group may cancel a grace of tax payment if the person who has been granted the grace of tax payment:

- (i) has withdrawn the request for the MAP consultation;
- (ii) does not cooperate in providing the documents necessary for the MAP;
- (iii) is found unable to pay the income tax, the corporation tax and local corporation tax related to the grace of tax payment in full within the period of the grace of tax payment where any of the facts listed in the items of paragraph 1 of Article 38 [Advance Demand] of the Act on General Rules for National Taxes have arisen;
- (iv) does not follow an order issued by the Regional Commissioner pursuant to paragraph 1 of Article 51 [Change in Security, etc.] of the Act on General Rules for National Taxes regarding the security deposited for the income tax, the corporation tax and local corporation tax related to the grace of tax payment;
- (v) has any new delinquent national tax other than the income tax, the corporation tax and local corporation tax related to the grace of tax payment, except where the Regional Commissioner of the Regional Taxation Bureau in charge finds there is a compelling reason for the new delinquency; or
- (vi) is found inappropriate to be granted a grace of tax payment because of changes which have arisen in the person's assets or other circumstances.

(Note) The MAP Office, the RTB Large Enterprise Examination Division, the Individual Management Taxation Group or the Corporation Management Group, if they have found that there were changes in the assets or other circumstances of an individual or a corporation or foreign corporation to which a grace of tax payment has been granted, will inform the RTB Special Collection Group of that fact without delay (in the case where the MAP Office informs the RTB Special Collection Group, via the NTA Collection Division; in the case where the Individual Management informs the RTB Special Collection Group, via the RTB Individual Taxation Division; in the case where the Corporation Management Group informs the RTB Special Collection Group, via the RTB Corporation Taxation Division).

- (b) Before the cancelation of the grace of tax payment pursuant to (a), the RTB Special Collection Group shall, except where (a)(i) or (iii) applies, hear the explanation from the person who has been granted that grace of tax payment. However, where that person gives no explanation without any justifiable reason, it may cancel a grace of tax payment without hearing the explanation.
- (c) Where the RTB Special Collection Group has canceled the grace of tax payment pursuant to (a), the RTB Special Collection Group shall inform the person to whom the grace of tax payment has been granted of the cancellation by Form 5-7 and if there are the guarantors and third party mortgagors or pledgers, inform them of the cancellation by Form 5-8. In this case, the RTB Special Collection Group will notify the related RTB divisions and the MAP Office (via the NTA Collection Division) of that fact.

- (d) Where the related RTB division has received the notification pursuant to (c), this related RTB division will notify the related NTA divisions (where the related division is the RTB Individual Taxation Division, that related RTB division will notify the Individual Management Group; where the related division is the RTB Corporation Taxation Division, that related RTB division will notify the Corporation Management Group as well) of that fact.
- (16) Procedures when an Agreement is Reached on the MAP consultation
- (a) Where there are two or more MAPs related to the income tax or the corporation tax and local corporation tax covered by the grace of tax payment, and a part of MAPs comes to fall under any of the following, the MAP Office will inquire of the related NTA divisions the amount of the grace of tax payment related to the other continued MAP consultation:
- (i) a mutual agreement under 16;
  - (ii) termination of the MAP under 17;
  - (iii) withdrawal of a request for a MAP under 18;
  - (iv) a mutual agreement under 27; or
  - (v) termination of the MAP under 28.
- (b) Where a related NTA division has received the inquiry pursuant to (a) from the MAP Office, it will instruct the RTB Large Enterprise Examination Division, the Individual Management Group (via the RTB Individual Taxation Division) or the Corporation Management Group (via the RTB Corporation Taxation Division) to notify the related NTA division (where the Individual Management Group notifies the related NTA division, via the RTB Individual Taxation Division; where the Corporation Management Group notifies the related NTA division, via the RTB Corporation Taxation Division) and the RTB Special Collection Group of the amount of the grace of tax payment related to the other continuing MAP or MAPs and will notify the MAP Office of the amount of the grace of tax payment related to the notification.
- (c) Where the RTB Special Collection Group has received the notification pursuant to (b), it will take measures that are necessary for mutual agreement on a part of two or more MAPs, such as the cancellation of a part of the security deposited, and will inform the person to whom the grace of tax payment has been granted of the amount of the grace of tax payment related to the other continuing MAP or MAPs by Form 5-9, and if there are the guarantors and third party mortgagors or pledgers, inform them of the same by Form 5-10. In this case, the RTB Special Collection Group will inform the related RTB divisions and the MAP Office (via the NTA Collection Division) of that fact.
- (d) Where the related RTB division has received the notification pursuant to (c), this related RTB division will inform the related NTA divisions (where the related division is the RTB Individual Taxation Division, that related RTB division will notify the Individual Management Group; where the related division is the RTB Corporation Taxation Division, that related RTB division will notify the Corporation Management Group as well) of that fact.
- (17) Exemption from Delinquent Tax

Where a grace of tax payment has been granted, the associated delinquent tax on the income tax or the corporation tax and local corporation tax for the period that corresponds to the period of the grace of tax payment (where the application for a grace of tax payment was made prior to the due date for the payment of income tax or corporation tax and local corporation tax, including the period from the date of the application to the due date for the payment of income tax or corporation tax and local corporation tax) shall be exempted. However, where the grace of tax payment is cancelled due to any of the grounds listed in (15)(a), the delinquent tax corresponding to the period from the day following the date on which the cause for the cancellation occurred need not be exempted.

(18) Other Matters to be Noted Related to a Grace of Tax Payment

- (a) Regarding matters related to a grace of tax payment and not provided for herein, the procedures provided for in the Directive on the Handling of the Grace of Tax Payment, etc. will be appropriately followed.
- (b) It should be noted that the Certificate of Tax Payment Type 3, which certifies there is no amount of unpaid taxes, cannot be issued during the period of the grace of tax payment.
- (c) It should be noted that in cases where a tax refund to a taxpayer who has been granted a grace of tax payment has arisen during the period of the grace of tax payment, the refund cannot be appropriated for the amount of income tax or corporation tax and local corporation tax related to the grace of tax payment, but shall be paid to the taxpayer (refer to the proviso to paragraph 1 of Article 23 [Suitability for Appropriation of a Refund, etc.] of the Order for Enforcement of the Act on General Rules for National Taxes and paragraph 4 of Article 39-12-2 of the Order for Enforcement of the Act on Special Measures Concerning Taxation).

**43. Notification to Prefectures, etc. in Relation to the Grace of (Local) Tax Collection**

- (1) The procedures where an individual or a corporation requests a MAP pursuant to 3(1) or where an individual or a corporation requests a MAP with the competent authority of the treaty partner and the MAP Office has received a proposal for initiation of a MAP consultation from the competent authority of the treaty partner prescribed in 21(1) on the grounds that the corporation was subject to transfer pricing taxation in Japan, taxation pursuant to Special Provision for Taxation on Internal Dealing (taxation pursuant to paragraph 1 of 40-3-3 or paragraph 1 of 66-4-3 of the Act on Special Measures Concerning Taxation; the same shall apply hereinafter) or taxation pursuant to Special Provisions for Calculation of Foreign Income (taxation pursuant to paragraph 1 of Article 41-19-5 or paragraph 1 of Article 67-18 of the Act on Special Measures Concerning Taxation; the same shall apply hereinafter) are as follows:
  - (a) The Individual Management Group, the Corporation Management Group or the RTB Large Enterprise Examination Division that has received an instruction regarding a request for a MAP (which means a request of a MAP made pursuant to 6(1) and receipt of a proposal for initiation of a MAP consultation from the competent authority of the treaty partner prescribed in 21(1); hereinafter the same in (a)) from the related NTA divisions (via the RTB Individual Taxation

Division in the case of the Individual Management Group, via the RTB Corporation Taxation Division in the case of the Corporation Management Group), pursuant to 7(3) or 21(3) in the case of the Individual Management Group and the Corporation Management Group, and pursuant to 7(2) or 21(2) in the case of the RTB Large Enterprise Division, will inform the related NTA divisions of the following amount set forth in the following matters;

- (i) Where the applicant related to the instruction or the applicant who has made a request for MAP with the competent authority of the treaty partner is an individual;

The amount of the individual tax covered in MAP resulted from taxation under item 1 of paragraph 22 of Article 40-3-3 of the Act on Special Measures Concerning Taxation connected with the instruction and the amount of taxable income on which the individual tax amount is based.

- (ii) Where the applicant related to the instruction or the applicant who has made a request for MAP with the competent authority of the treaty partner is a corporation;

The amount of corporation tax covered in the MAP resulted from taxation under item 1 of paragraph 27 of Article 66-4 of the Act on Special Measures Concerning Taxation connected with the instruction, the amount of local corporation tax covered in the MAP resulted from taxation under item 3 of paragraph 27 of Article 66-4 of the said Act connected with the instruction and the amount of taxable income on which the corporation tax amount is based;

- (b) Where the related NTA division has received the notification pursuant to (a) from the related RTB divisions, that related NTA division will inform the MAP Office of the matters prescribed in (a)(i) or (ii) (hereinafter referred to as “the amount of taxation under a request for a MAP”);

(Note) It should be noted that where the transfer pricing taxation, taxation pursuant to Special Provisions for Taxation on Internal Dealings or taxation pursuant to Special Provisions for Calculation of Foreign Income has been made in Japan on two or more taxable years, the notification of the amount of taxation under a request for a MAP will be separately given for each taxable year.

- (c) Where the MAP Office has received the notification pursuant to (b) from the related NTA divisions, it will inform the Municipal Resident Tax Division of the municipality in which the address of the individual or the corporation is located or the Prefectural Resident Tax Division of the prefecture in which the office or the business premises (where the individual or the corporation has offices or business premises in more than two prefectures, its main office or business premises; the same shall apply hereinafter) of the corporation is located of the following matters:

- (i) The fact that the request for a MAP has been made;
- (ii) The amount of taxation under a request for a MAP that made in each taxable year of transfer pricing taxation, taxation pursuant to Special Provisions for Taxation on Internal Dealings or taxation pursuant to Special Provisions for Calculation of Foreign Income;

- (iii) The name of the individual and the corporation that has made the request for a MAP, the name of its representative, the address of the individual or the office or business premises of the corporation and its individual number or its corporate number;
- (iv) The date on which the request for a MAP was made (in the case where initiation of a MAP consultation has proposed under 21(1), the date on which the MAP Office has received such proposal);
- (v) The taxable year of taxation under the request for a MAP;
- (vi) The name of the treaty partner connected with the request for a MAP; and
- (vii) Other useful information.

(Note) It should be noted that where an individual or a corporation has requested a MAP before the taxation referred above is made in Japan, the procedures in (a) to (c) will be conducted after such taxation has been made.

- (2) The procedures where an agreement is reached on a MAP prescribed in (1) (except where the MAP agreement does not change the amount of taxation under a request for a MAP) are as follows:
  - (a) Where the Individual Management Group, the Corporation Management Group or the RTB Large Enterprise Examination Division has received the instructions pursuant to 16(3) or 27(2) from the related NTA division (via the RTB Individual Taxation Division in the case of the Individual Management Group, via the RTB Corporation Taxation Division in the case of the Corporation Management Group) regarding the MAP prescribed in (1), the Individual Management Group, the Corporation Management Group or the RTB Large Enterprise Examination Division that received such instructions will inform the related NTA divisions of the following amount set forth in the following matters;
    - (i) Where the applicant related to the instruction or the applicant who has made a request for MAP with the competent authority of the treaty partner is an individual;
 

The amount of individual tax resulted from the correction under Article 26 of the Act on General Rules for National Taxes and the amount of taxable income on which the individual tax amount is based;
    - (ii) Where the applicant related to the instruction or the applicant who has made a request for MAP with the competent authority of the treaty partner is a corporation;
 

The amount of the corporation tax resulted from the correction under Article 26 of the Act on General Rules for National Taxes, the amount of local corporation tax resulted from the correction under said article and the amount of taxable income on which the corporation tax amount is based;
  - (b) Where the related NTA division has received the notification pursuant to (a) from the related RTB division, that related NTA division will inform the MAP Office of the amount of the matters prescribed in (a)(i) or (ii) under notification (hereinafter referred to as “the amount of correction based on the mutual agreement”);

- (c) Where the MAP Office has received the notification pursuant to (b) from the related NTA divisions, it will inform the Municipal Resident Tax Division in which the address of the individual is located or the Prefectural Tax Division of the prefecture in which the office or business premises of the domestic corporation is located of the following matters:
- (i) The fact that an agreement regarding the MAP has been reached;
  - (ii) The amount of correction based on the mutual agreement in each taxable year;
  - (iii) The name of the individual and the corporation that has made the request for a MAP, the name of its representative, the address of its office or business premises and its individual number or its corporate number;
  - (iv) The date of the agreement of the MAP;
  - (v) The taxable year relating to the amount of correction based on the mutual agreement;
  - (vi) The name of the treaty partner connected with the request for a MAP; and
  - (vii) Other useful information.
- (3) It should be noted that where an agreement is reached on a part of two or more MAPs prescribed in (1), except where the MAP agreement does not change the amount of taxation under a request for a MAP, the following procedures will be taken in addition to (2)(a), (b) and (c).
- (a) Where the Individual Management Group, the Corporation Management Group or the RTB Large Enterprise Examination Division has received the instructions pursuant to 16(3) or 27(2) from the related NTA division (via the RTB Individual Taxation Division in the case of the Individual Management Group, via the RTB Corporation Taxation Division in the case of the Corporation Management Group; hereinafter the same in (a)) regarding the agreement reached on a part of two or more MAPs defined in (1), the Corporation Management Group or the RTB Large Enterprise Examination Division that has received such instructions will inform the related NTA divisions of the amount of taxation related to the other continuing MAP or MAPs when it informs the related division pursuant to (2)(a). These amounts are calculated as the amounts of corrections which would have been made if the MAP prescribed in (1) on which the agreement was reached has not been requested; hereinafter the same in (3).
  - (b) Where the related NTA division has received the notification pursuant to (a) from the related RTB divisions, that related NTA division will inform the MAP Office of the amount of taxation related the other continuing MAP or MAPs when it informs the MAP Office pursuant to (2)(b).
  - (c) Where the MAP Office has received the notification pursuant to (b) from the related NTA divisions, it will inform the Municipal Resident Tax Division or the Prefectural Resident Tax Division of the amount of taxation and the name of the treaty partner connected with the other continuing MAP or MAPs in addition to the items provided for in (2)(c), (i) to (vii).
- (4) Where the agreement reached does not change the amount of taxation under a request for a MAP or where the MAP prescribed in (1) is terminated, the MAP Office will inform the Municipal Resident Tax Division of the in which the address of the individual is located or the Prefectural

Resident Tax Division of the prefecture in which the office or business premises of the domestic corporation or the foreign corporation is located of the following matters:

- (a) The fact that the agreement reached does not change the amount of taxation under a request for a MAP or the fact the MAP has been terminated;
  - (b) The name of the individual or the corporation that has made the request for a MAP, the name of its representative, the address of its office or business premises and its individual number or its corporate number;
  - (c) The date of the agreement or the termination of the MAP;
  - (d) The name of the treaty partner; and
  - (e) Other useful information.
- (5) It should be noted that where there are two or more MAPs prescribed in (1) and a part of them comes to fall under the fact referred to in (4)(a), the following procedures will be taken in addition to the above.
- (a) The MAP Office will require the related NTA divisions to confirm the amounts of taxations related to the other continuing MAP or MAPs. These amounts are calculated as the amounts of corrections which would have been made if the MAP fallen under the fact referred in (4)(a) had not been requested (the same will apply hereinafter).
  - (b) Where the related NTA division has been required to confirm pursuant to (a) from the MAP Office, that related NTA division will instruct the RTB Large Enterprise Examination Division, the Individual Management Group(via the RTB Individual Taxation Division)or the Corporation Management Group (via the RTB Corporation Taxation Division) to notify the related NTA division (where the Individual Management Group notifies the related NTA division, via the RTB Individual Taxation Division, and where the Corporation Management Group notifies the related NTA division, via the RTB Corporation Taxation Division) of the amounts of taxations related to the other continuing MAP or MAPs, and will notify the MAP Office of the amounts of taxations related to the other continuing MAP or MAPs.
  - (c) Where the MAP Office has received the notification pursuant to (b) from the related NTA divisions, it will inform the Municipal Resident Tax Division and the Prefectural Resident Tax Division of the amounts of taxations related to the other continuing MAP or MAPs and the name of the treaty partner, in addition to the items provided for in (4)(a) to (e).