

# Guidance for Taxpayers on the Mutual Agreement Procedure (Q&A)

July, 2019

Office of the Mutual Agreement Procedure  
National Tax Agency, Japan

This guidance is to complement the contents of the Commissioner's Directive on the Mutual Agreement Procedure (Administrative Guidelines)\*1. This provides clear MAP guidance to taxpayers required by the recommendation of the BEPS Action14 Final Report\*2 published in October, 2015.

For further information about the Mutual Agreement Procedure, please refer to the Commissioner's Directive on the Mutual Agreement Procedure (Administrative Guidelines).

\*1 Amended on May 7, 2019.

\*2 The BEPS Action14 Final Report: Element 2.1

*Countries should publish rules, guidelines and procedures to access and use the MAP and take appropriate measures to make such information available to taxpayers. Countries should ensure that their MAP guidance is clear and easily accessible to the public.*

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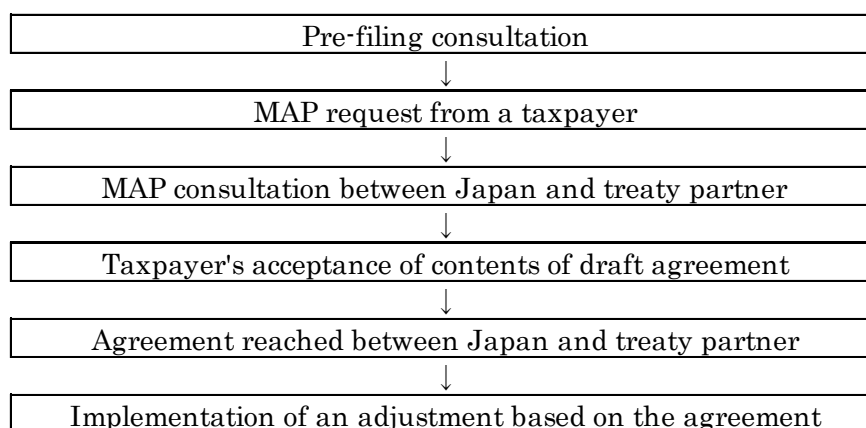
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## 1. The Outline of the Mutual Agreement Procedure (MAP)

### Q1-1 What is a MAP?

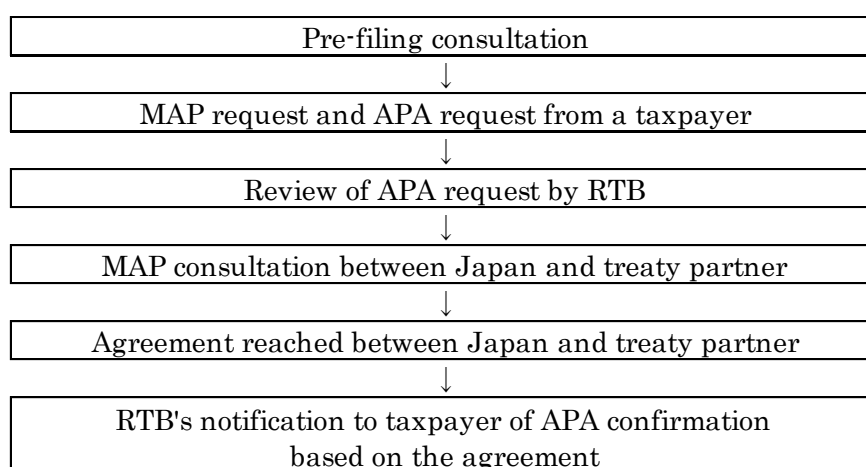
- A MAP is a procedure between the competent authorities of contracting states (in the case of Japan, the MAP Office) pursuant to the provisions of the tax treaties. The purpose of this procedure is resolving disputes on cases relating to:
  - ① Taxation not in accordance with the provisions of tax treaties resulting from the actions of one or both of the contracting states **【Taxation Case】** ;
  - ② Advance pricing arrangement (APA) to determine an appropriate set of criteria (e.g. method, comparable and appropriate thereto) for determination of the transfer pricing for controlled transactions **【APA Case】** .

(A basic MAP process flowchart **【Taxation Case】** )



\* For further information, please see Commissioner's Directive on the Mutual Agreement Procedure (Administrative Guidelines)

(A basic MAP process flowchart **【APA Case】** )



\* For further information, please see Commissioner's Directive on the Operation of

## Transfer Pricing (Administrative Guidelines)

### Q1-2 What is the purpose of MAP?

- One of the purposes of a tax treaty is to eliminate double taxation. However, even a treaty is concluded, unintended international double taxations may occur by the actions of one or both of the contracting states that result in taxation not in accordance with provisions of an applicable tax treaty. A MAP pursuant to the tax treaty is mainly aiming at eliminating such double taxation.

### Q1-3 Which provisions of a tax treaty allow a MAP?

- Generally, a tax treaty contains provisions related to MAP (MAP provisions), which allows the competent authorities to implement a MAP process, e.g. in the case of tax treaty between Japan and United States signed in 2003, the MAP provisions are described in Article 25 of the treaty.

(Note) MAP provisions described in Japan's tax treaties are generally following the provisions of the OECD's Model Tax Convention developed by the Organization for Economic Co-operation and Development (OECD). The OECD Model includes the MAP provisions in Article 25 as follows:

#### Article 25 of the OECD's Model Tax Convention (MUTUAL AGREEMENT PROCEDURE)

1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of either Contracting State. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Convention.
2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with the Convention. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting States.
3. The competent authorities of the Contracting States shall endeavour to resolve by

mutual agreement any difficulties or doubts arising as to the interpretation or application of the Convention. They may also consult together for the elimination of double taxation in cases not provided for in the Convention.

4. The competent authorities of the Contracting States may communicate with each other directly, including through a joint commission consisting of themselves or their representatives, for the purpose of reaching an agreement in the sense of the preceding paragraphs.

5. Where,

a) under paragraph 1, a person has presented a case to the competent authority of a Contracting State on the basis that the actions of one or both of the Contracting States have resulted for that person in taxation not in accordance with the provisions of this Convention, and

b) the competent authorities are unable to reach an agreement to resolve that case pursuant to paragraph 2 within two years from the presentation of the case to the competent authority of the other Contracting State,

any unresolved issues arising from the case shall be submitted to arbitration if the person so requests. These unresolved issues shall not, however, be submitted to arbitration if a decision on these issues has already been rendered by a court or administrative tribunal of either State. Unless a person directly affected by the case does not accept the mutual agreement that implements the arbitration decision, that decision shall be binding on both Contracting States and shall be implemented notwithstanding any time limits in the domestic laws of these States. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this paragraph.

**Q1-4 Please provide information regarding the number of MAP cases?**

- The number of MAP cases initiated in Japan, which are requested in Japan or requested from the competent authority of a treaty partner, has been increasing over recent years.
- For more details, please see "[MAP Report](#)".

**Q1-5 Which countries can Japan's competent authorities negotiate MAP cases with?**

- Japan has concluded more than 70 treaties including MAP provisions.
- For further information, please see [Japan's Tax Conventions Including MAP Provisions \(as of Jan 1, 2018\)](#).

**Q1-6 Please give details about the circumstances surrounding MAP around the world.**

- With respect to the number of MAP cases, there is a clear upward trend around the world over the past years. It is important to collaborate not only at a bilateral level but also at a multilateral level in order to resolve those cases effectively and efficiently.
- In the Base Erosion and Profit Shifting (BEPS) project launched by the OECD in 2012, the measures are developed to strengthen the effectiveness of MAP mechanisms resolving a dispute relating to a tax treaty, in order to eliminate uncertainty of unintended double taxation and ensure predictabilities. The BEPS Action 14 final report, published in October 2015, reflects a commitment by countries to implement a minimum standard on dispute resolution, consisting of specific measures to remove obstacles to an effective mutual agreement procedure.
- The implementation of the minimum standard by countries is assessed and reviewed through a peer monitoring process in order to ensure that the commitments contained in the minimum standard are effectively satisfied. This peer monitoring process, launched in December 2016, has been conducted by all jurisdictions that commit to the minimum standard under the Forum on Tax Administration MAP Forum (the FTA MAP Forum).

✧The BEPS Action14 final report

1.3 Countries should commit to a timely resolution of MAP cases: Countries commit to seek to resolve MAP cases within an average timeframe of 24 months. Countries' progress toward meeting that target will be periodically reviewed on the basis of the statistics prepared in accordance with the agreed reporting framework referred to in element 1.5.

1.6 Countries should commit to have their compliance with the minimum standard reviewed by their peers in the context of the FTA MAP Forum.

2.1 Countries should publish rules, guidelines and procedures to access and use the MAP and take appropriate measures to make such information available to taxpayers. Countries should ensure that their MAP guidance is clear and easily accessible to the public.

\* Action 14 - 2015 Final Report (OECD website)

**Q1-7 How long does it take to resolve a MAP case after its request is made?**

- In general, the duration of the MAP varies depending on the complexity of its case, the state of submission of documents by an applicant and the tax administrative



system of a treaty partner. According to the MAP statistics of Japan (MAP Report), the average processing time on a MAP request resolved in the past years takes approximately 2 years.

- For more details, please see “MAP Report”.
- The BEPS Action14 final report recommends that countries commit to seek to resolve the MAP cases related to Taxation Cases within an average timeframe of 24 months. The NTA also seeks to resolve the MAP cases within the timeframe above mentioned.

※The BEPS Action14 final report: Element 1.3

Countries should commit to a timely resolution of MAP cases: Countries commit to seek to resolve MAP cases within an average timeframe of 24 months. Countries’ progress toward meeting that target will be periodically reviewed on the basis of the statistics prepared in accordance with the agreed reporting framework referred to in element 1.5.

**Q1-8 What the items should a taxpayer pay attention to for making a MAP request?**

1) Making good use of a pre-filing consultation

- Whether a MAP case can be resolved in an effective and efficient manner heavily relies on various elements, such as the particularity or complexity of the case, tax administrative systems of the treaty partner, its experiences on the MAP issues, its relevant domestic laws or administrative practice, or its domestic remedies. Those elements must be taken into account in conducting a MAP consultation so that the NTA highly recommends that a taxpayer hold a pre-filing consultation before filing a MAP request. (See Q2-3 ~Q2-5)

2) Communicating and providing documents with the NTA on a timely basis.

- Please contact with the NTA officer in charge in a timely manner in order to perform a MAP consultation effectively and efficiently.
- The NTA may request the taxpayer who made the MAP request to submit documents necessary for determining an objection in the MAP request is justified, for proceeding a MAP consultation and for reviewing the APA request. In such a case, please provide those requested documents in a timely manner.
- Such documents necessary for resolving MAP cases may be requested by the tax authority of a treaty partner through its foreign affiliated corporation. Please share those submitted documents with the NTA officer without delay.
- It should be noted that the failure of providing or updating significant information

regarding a MAP case in a timely manner may cause a serious impediment for resolving the MAP case.

3) Keeping consistency in contents of the documents to both tax authorities.

- For some cases like transfer pricing taxation and APA, an applicant makes a MAP request with the required documents to Japan's tax authority, while its foreign affiliated corporation also submits a MAP request with the required documents to its treaty partner's tax authority. In such cases, any serious inconsistency in explanation (including description in the MAP request and the required documents) or the significant timing gap of such explanation to both competent authorities may cause great confusion in the MAP consultation and interrupt its efficient resolution.
- Especially, if the application of a MAP request filed to a treaty partner is significantly different from the one filed to the NTA, such inconsistency may cause a serious impediment for resolving the MAP case.

## 2. MAP

### Q2-1 Who is eligible to request for MAP assistance?

- The following person can request for MAP assistance pursuant to an applicable tax treaty, only if such person has been, or will be subject to taxation not in accordance with the provisions of a tax treaty:
  - ① Resident,
  - ② Domestic corporation,
  - ③ Non-resident\* and,
  - ④ Foreign corporation\*.
- \*Non-resident and foreign corporation can make a MAP request only if such a request is allowed in an applicable tax treaty.
- A MAP request regarding an APA can be made by a taxpayer who made, or will make an APA request in accordance with the Commissioner's Directive on the Operation of Transfer Pricing.

\* Current Status of Negotiations on Tax Conventions (Text and Outline)

### Q2-2 How can a taxpayer request for MAP assistance?

- A request for MAP assistance (a MAP request) shall be made by filing an application "The Application for the Mutual Agreement Procedure" (Form1) with attachments (See Q2-7) to the Office of Mutual Agreement Procedures (the MAP Office).
- If the covered transactions of a MAP request is related to a consolidated subsidiary,

its consolidated parent corporation shall file an application with attachments.

(For submission)

Office of Mutual Agreement Procedures, National Tax Agency, JAPAN

Office Address: 3-1-1 Kasumigaseki, Chiyoda-ku, Tokyo 100-8978 JAPAN

Contact details: Tel: +81-3-3593-6388

- In the case of requests for MAP assistance regarding an APA, an APA request shall be made to the relevant Regional Taxation Bureau (RTB) in accordance with the Commissioner's Directives on the Operation of Transfer Pricing, in addition to the MAP request to the MAP Office.
- A pre-filing consultation for a MAP request is highly recommended before filing the MAP request. (See Q1-8)

(The Pre-filing consultation)

**Q2-3 Can a taxpayer consult with the NTA before requesting MAP assistance?**

- The MAP Office accepts a request for a pre-filing consultation with taxpayers who consider requesting for MAP assistance. Thus, the NTA highly recommends that taxpayers make good use of such consultation before filing a MAP request. An anonymous consultation through an agent is also available.
- Taxpayers are required to make an appointment in advance to hold a pre-filing consultation with the MAP Office (Such appointment for the pre-filing consultation for APA can also be made through the relevant divisions in RTBs).

**Q2-4 Is there a deadline for a pre-filing consultation?**

- There is no deadline for a pre-filing consultation. However, the NTA recommends you have a pre-filing consultation early when you consider that actions of one or both of the contracting states result or will result in taxation not in accordance with the provisions of tax treaties, in order to proceed the MAP in an effective and efficient manner.
- It should be noted that some tax treaties have time limits for filing a MAP request.
- Also, it should be noted that there is a deadline for filing an APA request in Japan.

**Q2-5 What kind of documents should be prepared for a pre-filing consultation?**

- Please prepare documents including a summary of the taxation related to the MAP request, facts and circumstances related to the taxation and the reason for the MAP request, in order to carry out the pre-filing consultation smoothly.
- As for an APA case, you need to prepare the outline of the covered transactions and

the organization which conducts such transactions, documents explaining the capital relationships with its foreign affiliated corporation and other documents relevant to the request.

- If the documents are in foreign languages, please attach Japanese translations of them.

(The procedure of MAP request)

**Q2-6 Please provide the application form for requesting MAP assistance.**

- Please see “[Application for the Mutual Agreement Procedure](#)” .

**Q2-7 What kind of materials should be attached to the application for a MAP?**

- Please attach the following materials to the application:

①If the request is related to taxation in Japan or in a treaty partner:

(Cases where the taxation has occurred)

- ✓ A copy of the letter of the assessment that proves such taxation.
- ✓ A written description of the details of the facts related to the taxation and an outline of the position of the applicant or its foreign affiliated corporation to such taxation.

(Case where the taxation has not yet occurred)

- ✓ A written description of the details of the facts which will result in taxation and an outline of the position of the applicant or its foreign affiliated corporation to such taxation.

②If the request is related to taxation in Japan or in a treaty partner, and the applicant or its foreign affiliated corporation has presented the case to an administrative tribunal or a court:

- ✓ Documents described in ①
- ✓ Documents indicating that an administrative appeal or a lawsuit regarding the taxation has been filed, and an outline of the position of the applicant or its foreign affiliated corporation to such taxation.
- ✓ A copy of the complaint for an administrative appeal or a lawsuit.

③If the request is related to transfer pricing taxation in Japan or in a treaty partner:

- ✓ Documents described in ①
- ✓ Documents describing the direct or indirect capital relationship or the de facto control relationship between the parties involved in the transactions that are the subject of the MAP request.

④ If the request is related to Article 13 of the Ministerial Ordinance (Income Tax Convention), and if an applicable tax treaty or intergovernmental agreements appended to the tax treaty provide items that should be considered in the MAP:
<ul style="list-style-type: none"> <li>✓ Documents described in ①</li> <li>✓ Documents relating to those items.</li> </ul>
⑤ If the applicant or its foreign affiliated corporation has made a MAP request to the competent authority of the treaty partner:
<ul style="list-style-type: none"> <li>✓ Documents described in ①</li> <li>✓ A copy of documents explaining that fact.</li> </ul>
⑥ Other documents that are relevant to the MAP

- If a MAP request is related to an APA, it is not necessary for a taxpayer to submit the required attachments to the MAP application, as the APA request or the APA request regarding consolidated companies, together with its attachments, submitted to the relevant RTB, will be circulated to the MAP Office.
- If the attachments are in foreign languages, please attach Japanese translations of them.
- The MAP Office may request additional materials not listed above necessary for determining the objection made by the taxpayer in the MAP request is justified or for proceeding MAP consultation. In that case, please submit those materials in a timely manner.

**Q2-8 Does a taxpayer need to pay fees for a MAP request or pre-filing consultation?**

- No fee is charged in Japan for a MAP request nor pre-filing consultation.

**Q2-9 Is there any deadline for a MAP request?**

- In Article 25 of the OECD's Model Tax Convention, there are provisions that stipulates a MAP request must be made within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Convention.
- Many tax treaties which Japan has concluded contain the similar provision. However, please check the provisions of an applicable tax treaty, as the provision may differ treaty by treaty.

Article 25 of the OECD's Model Tax Convention  
(MUTUAL AGREEMENT PROCEDURE)

1. Where a person considers that the actions of one or both of the Contracting States

result or will result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of either Contracting State. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Convention.

**Q2-10 Please provide examples of a MAP request which will be accepted by the NTA?**

- For example, MAP requests can be made in the following cases:
  - ① Cases where a domestic corporation requests for MAP assistance 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 corporation.
  - ② Cases where a domestic corporation requests for MAP assistance with regard to the transactions between the domestic corporation and its foreign affiliated corporation, with a request for an APA in accordance with the Commissioner's Directive on the Operation of Transfer Pricing.
  - ③ Cases where a resident or a domestic corporation requests for MAP assistance 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.
  - ④ Cases where a domestic corporation requests for MAP assistance with regard to its APA request made in accordance with the Commissioner's Directive on the Operation of Auditing, etc. for Income Attributable to Permanent Establishments.
  - ⑤ Cases where a resident or a domestic corporation requests for MAP assistance 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.
  - ⑥ Cases where a non-resident who has Japanese nationality requests for MAP assistance 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.
  - ⑦ Cases where a Japanese resident who is also regarded as a resident of a treaty partner under laws of the treaty partner requests for MAP assistance in order to determine the nation of which the individual is to be deemed to be a resident under the applicable tax treaty.

- With regard to ① or ③ above, a taxpayer may request for MAP assistance in the cases of bona fide taxpayer-initiated foreign adjustments \*1 or multiple MAP cases\*2.
  - \*1 Cases regarding taxpayer-initiated adjustments permitted under the domestic laws of a treaty partner which allow a taxpayer under appropriate circumstances to amend a previously-filed tax return to adjust (i) the price for a transaction between associated enterprises or (ii) the profits attributable to a permanent establishment.
  - \*2 Cases related to taxation (e.g. transfer pricing) involving transactions over multi jurisdictions.
- A taxpayer may request MAP assistance in cases in which there is a disagreement between the taxpayer and the tax authorities making adjustment as to whether the conditions for the application of a treaty anti-abuse provision have been met or whether the application of a domestic anti-abuse provision is in conflict with the provision of a treaty.

Q2-11 With respect to the taxation not in accordance with the provisions of the applicable tax treaty, a taxpayer is trying to file an administrative appeal regarding such taxation in accordance with the domestic law of the country in which such taxation was made. Is it possible to make a MAP assistance request in addition to this domestic appeal?

- Taxpayers may request MAP assistance even if they have presented their cases to an administrative tribunal or court. In this case, in addition to the other necessary attachments, please submit the 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 corporation to the case, together with a copy of the complaint for the administrative appeal or the lawsuit.
- A decision on these issues has already been rendered by an administrative tribunal or court in Japan, the MAP office will conduct a MAP consultation by following such decision.

Q2-12 After filing an application for MAP request, I have found some deficiencies in the application. How can they be corrected?

- Please contact the MAP Office without delay if the applicant found an error or would like to make any significant changes in the application, its attachments or any other documents.
- If the MAP Office found deficiencies in the application filed, the MAP Office will

instruct the applicant to correct them. In case where the applicant will not follow such instruction, the MAP Office will notify the treaty partner's competent authority of not proposing the initiation of the MAP consultation, and then will inform the applicant of that notification.

**Q2-13 What procedure should be taken when a taxpayer would like to make a MAP request regarding an APA?**

- The procedure of making a MAP request regarding an APA is the same as the one of the other MAP cases. However, you must make the APA request, before or together with making the MAP request.
- The MAP process will terminate in the case where the taxpayer doesn't file the application for APA or withdraws such application, as it is not justifiable to start or continue the MAP consultation in such case.

(The procedure after a MAP request)

**Q2-14 Are there any cases where a MAP consultation will not be initiated even if a MAP request has been made?**

- After an objection made by a taxpayer is justified (If a MAP request is related to an APA, after being informed of the completion of the APA review by the RTB concerned), the MAP Office will propose the initiation of the MAP consultation to the competent authority of a treaty partner. However, such proposal will not be made in the following cases:
  - ① Cases where an applicant does not correct deficiencies of its Application for the Mutual Agreement Procedure or its attachments, when it was requested by the MAP Office.
  - ② Cases where an applicant does not make an APA request in accordance with the provisions of the Commissioner's Directive on the Operation of Transfer Pricing, when the MAP request is related to an APA (including the case where the applicant has withdrawn the request).
  - ③ Cases where an applicant does not submit the documents necessary for determining whether the objection made by the applicant in the MAP request is justified when it was requested by the MAP Office.
  - ④ Cases where the objection made by an applicant in a MAP request is not justified (in the case of the MAP request related to an APA, the case where the request is regarded as inappropriate case for the MAP under the Commissioner's Directive on the Operation of Transfer Pricing).



**Q2-15** Our company decided to join a consolidated corporation group after requesting for MAP assistance. What procedure should we follow in this case? On the other hand, what should we do if we have seceded from a consolidated corporation group?

- Please file the “Notification of Becoming or Joining a Consolidated Corporation Group, etc. and Continuing a Request for a Mutual Agreement Procedure or Notification of Seceding from a Consolidated Corporation Group, etc. and Continuing a Request for a Mutual Agreement Procedure” to the MAP Office without delay, where:
  - ① a corporation becomes a consolidated corporation after filing the application for a MAP,
  - ② a consolidated corporation engaged in transactions that are covered in a MAP request joins another consolidated corporation group,
  - ③ a consolidated corporation engaged in transactions that are covered in a MAP request becomes a corporation other than consolidated corporations.
- In the case of ① or ② above, the corporation which becomes a consolidated parent corporation shall file the notification to the MAP Office. In the case of ③ above, the corporation which engages transactions which are the subject of the MAP request shall file the notification to the MAP Office.

**Q2-16** What kind of cooperation is required for the applicant in the course of a MAP?

- The MAP Office may request additional materials necessary for determining if an objection in the MAP request is justified or for proceeding a MAP consultation, or for an APA review. In those cases, please submit the requested materials in a timely manner.
- The documents necessary for resolving MAP cases may be requested by the tax administration of the treaty partner through foreign affiliated corporation. In that case, please share those submitted materials with the NTA without delay. At the same time, consistent explanations are required to be provided to both competent authorities when submitting those materials.

**Q2-17** In case where both competent authorities reach an agreement to resolve a case, how can the applicant be informed of it by the MAP office?

- Before reaching an agreement to resolve a case, the MAP Office will send the draft of the agreement in writing to the applicant of the case, and ask whether the applicant accepts the proposal. After the applicant’s acceptance is confirmed, the MAP Office

will reach the agreement with the competent authority of the treaty partner.

- After a mutual agreement has been reached on a case, the MAP Office will notify the date and contents of the agreement to the applicant of the case by sending “Notification That a Mutual Agreement Has Been Reached” .

**Q2-18 What kind of procedure is required for the applicant after receiving the Notification That a Mutual Agreement Has been Reached from the MAP Office?**

- After a mutual agreement is reached on a case, the mutual agreement will be implemented by the following procedures according to the case:

(Taxation case other than withholding taxation case)

- Where a mutual agreement reached on a MAP case regarding taxation other than withholding taxation initiated by Japan has resulted in reducing the amount of income and/or tax of the applicant’s filed tax return, the Japanese tax authority will make a correction to the applicant’s filed tax return pursuant to Article 26 of the Act on General Rules for National Taxes. Accordingly, the applicant does not need to make a request for reassessment of its filed tax return.
- In cases where a mutual agreement reached on a case regarding taxation other than withholding taxation initiated by a treaty partner has resulted in reducing the amount of income and/or tax of the applicant’s filed tax return, the applicant has to make a request for reassessment of its filed tax return to comply with the mutual agreement within 2 months from the date on which the mutual agreement is reached, pursuant to paragraphs 1 or 2 of Article 7 of the Act on Special Provisions regarding the Application of Tax Treaties and paragraph 1 or 2 of Article 23 of the Act on General Rules for National Taxes.

(Withholding taxation case)

- In cases where a mutual agreement reached on a case has resulted in refunding all or a part of the amount of income tax and special income tax for reconstruction withheld by a withholding agent in Japan and where such an amount was voluntarily withheld by the withholding agent, that withholding agent will be requested to file a “Request for a Refund of Overpaid Withholding Income Taxes and Special Income Tax for Reconstruction” to the Japanese tax authority without delay.
- In cases where a mutual agreement reached on a case has resulted in refunding all or a part of the amount of income tax and special income tax for reconstruction withheld by a withholding agent in Japan on receipt of a notification of the

withholding income tax and special income tax for reconstruction, the Japanese tax authority will refund such an amount to the withholding agent. Accordingly, that withholding agent need not to file a Request for a Refund of Overpaid Withholding Income Taxes and Special Income Tax for Reconstruction.

- In cases where a mutual agreement reached on a case has resulted in refunding the amount of income tax withheld by a withholding agent in a treaty partner from the income which a resident or a domestic corporation in Japan receives from a resident or corporation in the treaty partner, the refund of such an amount will be made in accordance with the relevant procedures in the treaty partner.

(APA case)

- In cases where a mutual agreement has been reached on an APA case, an applicant has to revise its filed APA request to comply with the mutual agreement, if necessary. Based on the revised APA request, the APA confirmation will be notified in writing to the applicant by the District Director of the Tax Office relevant to the place of tax payment of the applicant.
- In cases where the amount of income of the applicant's filed tax return for an APA year has proved to be understated for the reason that the price for the covered transactions of the APA request has not been in accordance with the mutual agreement, the applicant has to voluntarily file an amended tax return to correct such understatement without delay. An amended tax return which was filed voluntarily before the Japanese tax authority points out such understatement, will not be treated as the "tax return filed foreknowing that an assessment should be made" as prescribed in paragraph 1 and 5 of Article 65 of the Act on General Rules for National Taxes. Moreover, in cases where an amended tax return is filed after the Japanese tax authority notifies the applicant of the initiation of an audit, such an amended tax return will be treated as the "tax return filed before receiving a notification regarding the initiation of an audit" as prescribed paragraph 5 of Article 65 of the Act on General Rules for National Taxes. Accordingly, any additional tax for understatement will not be imposed on such an amended tax return\*.

\* This treatment only applies to the additional tax with regard to having filed the amended tax return to comply with a mutual agreement on an APA case. Thus, even in such a case, the applicant has to pay the increased amount of tax in the amended tax return, and an additional tax may be imposed on any amount of tax in such an amended tax return other than the amount of tax to comply with the mutual

agreement on the APA case.

- In cases where the amount of income of the applicant's filed tax return for an APA year has proved to be overstated for the reason that the price for the covered transactions of the APA request has not been in accordance with the mutual agreement, the applicant has to make a request for reassessment of its filed tax return to comply with the mutual agreement within 2 months from the date on which the mutual agreement is reached pursuant to paragraphs 1 or 2 of Article 23 of the Act on General Rules for National Taxes.

(Note) If a mutual agreement on a case results in changing an amount of income tax or corporation tax to be paid, an amount of the local taxes to be paid will also change accordingly. For the procedures to be taken regarding such a changed amount of local taxes, please ask the local tax authority relevant to your place of tax payment.

Q2-19 Are there any MAP case which will not be reached an agreement after initiated?

- If the objection made by a taxpayer in a MAP request is justified, the competent authorities of Japan and a treaty partner should endeavor to resolve the case by mutual agreement under the provisions of a tax treaty.
- However, the MAP Office will propose termination of a MAP consultation to the competent authority of a treaty partner if there is no appropriate reason for continuing the MAP consultation; for instance, if it has found that the issue regarding a MAP request is not the subject of the MAP provisions under an applicable tax treaty after the MAP consultation has started.
- In addition, the termination of a MAP consultation will be proposed to the competent authority of a treaty partner in cases:
  - ① where an applicant does not cooperate in providing the documents necessary for a MAP consultation,
  - ② where an applicant does not accept the draft of an agreement proposed by the MAP Office before both competent authorities reach an agreement to resolve a case,
  - ③ where significant inconsistency between the contents explained by an applicant or its foreign affiliated corporation for each competent authority (including description in a MAP request or required materials) causes a serious influence on a MAP consultation, and

- ④ where continuation of a MAP consultation will reach no appropriate solution.
  - If the competent authority of a treaty partner accepts the termination of a MAP consultation proposed by the MAP Office, the MAP process will be terminated and the MAP Office will notify that fact to the applicant by sending a Notification That a Mutual Agreement Procedure Has been Terminated.
- (Note) The MAP process will be terminated also in cases where the competent authority of a treaty partner proposes the termination of a MAP consultation to the MAP Office and the MAP Office accepts such a proposal.

Q2-20 There is no necessity for us to continue a MAP anymore. What kind of procedure should a taxpayer follow to withdraw a MAP request?

- After filing a MAP request, an applicant can withdraw a MAP request any time before receiving a Notification That the Initiation of a Mutual Agreement Procedure Consultation Will not be Proposed, a Notification That a Mutual Agreement Has been Reached or a Notification That a Mutual Agreement Procedure Has been Terminated. In such case, please file Notification of the Withdrawal of a Request for a Mutual Agreement Procedure to the MAP Office.

### 3. Arbitration

Q3-1 What is “Arbitration” provided for in a tax treaty?

- Arbitration provided for in a tax treaty is a procedure in which, where both competent authorities are unable to reach an agreement within a certain period from the start date of a MAP case regarding taxation not in accordance with the provisions of an applicable tax treaty resulting from the actions of one or both of the contracting states, any unresolved issues arising from the MAP case will be submitted for resolution to the arbitration panel consisting of the third parties if the applicant so requests. Some of the Japan’s tax treaties include provisions regarding arbitration (arbitration provisions).
- The decision on the unresolved issues submitted to arbitration (arbitration decision) shall be binding on both competent authorities and shall be implemented notwithstanding any time limits in the domestic laws of both contracting states unless the applicant does not accept the mutual agreement that implements that arbitration decision.
- For more details of arbitration provisions described in Japan’s tax treaties, please see an applicable tax treaty (including the protocol attached to the treaty).
- Tax treaties that include arbitration provisions provide that both competent

authorities shall settle the mode of application of the arbitration provisions by mutual agreement in order to ensure that an arbitration decision will be implemented basically within 2 years from a request for arbitration. For further information about the mode of application of arbitration provisions, please see the “Implementing Arrangement Regarding the Arbitration Procedure” relating to an applicable tax treaty.

(Note) The provisions of Japan’s tax treaties generally follow the provisions of the OECD’s Model Tax Convention including the following arbitration provisions:

Paragraph 5 of Article 25 of the OECD’s Model Tax Convention

5. Where,

- a) under paragraph 1, a person has presented a case to the competent authority of a Contracting State on the basis that the actions of one or both of the Contracting States have resulted for that person in taxation not in accordance with the provisions of this Convention, and
- b) the competent authorities are unable to reach an agreement to resolve that case pursuant to paragraph 2 within two years from the presentation of the case to the competent authority of the other Contracting State,

any unresolved issues arising from the case shall be submitted to arbitration if the person so requests. These unresolved issues shall not, however, be submitted to arbitration if a decision on these issues has already been rendered by a court or administrative tribunal of either State. Unless a person directly affected by the case does not accept the mutual agreement that implements the arbitration decision, that decision shall be binding on both Contracting States and shall be implemented notwithstanding any time limits in the domestic laws of these States. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this paragraph.

\* Current Status of Negotiations on Tax Conventions (Text and Outline)

\* Implementing arrangements regarding arbitration procedure

Q3-2 Who is eligible to make a request for arbitration?

- The taxpayer who requested a MAP is eligible to make a request for arbitration if the MAP is requested under a tax treaty including arbitration provisions and both competent authorities are unable to reach an agreement to resolve the MAP case within a certain period\*1 from the start date of the MAP case\*2.

\*1 This period depends on an applicable tax treaty.

\*2 The MAP Office will confirm the start date of a MAP case with the competent authority of its treaty partner and will inform the applicant of the confirmed start date of the MAP case.

- Please note that a request for arbitration can be made only if the MAP case is related to taxation not in accordance with the applicable tax treaty resulting from one or both of the contracting states.

**Q3-3 What are the procedures for making a request for arbitration?**

- A request for arbitration shall be made by filing an “Application for the Arbitration Procedure” to the MAP Office (See Q2-2).
- Please see “[Application for the Arbitration Procedure](#)”. (Only available in Japanese)  
(Note) The taxpayer who has made a request for arbitration can withdraw that request by filing a “Notification of the Withdrawal of a Request for Arbitration Procedure” to the MAP Office any time before receiving “a Notification That a Mutual Agreement Has Been Reached”.

If the taxpayer who has made a request for arbitration would like to withdraw the MAP request as well as the request for arbitration procedure, it is sufficient that the taxpayer files a “Notification of the Withdrawal of a Request for a Mutual Agreement Procedure” to the MAP Office, and a “Notification of the Withdrawal of a Request for Arbitration Procedure” need not be filed.

**Q3-4 What are the fees for an arbitration request?**

- No fee is charged in Japan for an arbitration request.

**Q3-5 What items should a taxpayer pay attention to for making a request for arbitration?**

- Please note that a taxpayer cannot make a request for arbitration if a decision on the unresolved issues regarding a MAP case has already been rendered by a court or an administrative tribunal in Japan or in a treaty partner.

**4. Grace of Tax Payment Related to Transfer Pricing Taxation**

**Q4-1 What is the grace of tax payment related to transfer pricing taxation?**

- Where a taxpayer has been subject to transfer pricing taxation, etc. in Japan and has

requested a MAP assistance regarding such taxation, upon request from the individual or corporation, a certain period of a grace of tax payment may be granted up to a certain amount of income tax or corporation tax and local corporation tax, and additional tax to be paid as a result of such taxation.

(Note) A grace of tax payment also may be granted to an amount of special individual tax for reconstruction or special corporation tax for reconstruction and additional tax to be paid as a result of transfer pricing taxation, etc. in Japan.

- The period of a grace of tax payment is a period from the due date for payment of income tax, etc. to be paid as a result of transfer pricing taxation, etc. (if the day of the application for a grace of tax payment is later than such due date, the day of the application) to the date on which one month has elapsed after the date of an adjustment made based on a mutual agreement between both competent authorities (if the competent authorities have not reached an agreement and terminated the MAP consultation, one month after the date of the Commissioner's notification of such a fact)
- For further information about the procedures regarding the grace of tax payment related to transfer pricing taxation, etc., please see section 43 (Grace of Tax Payment) of the Commissioner's Directive on the Mutual Agreement Procedure (Administrative Guidelines).
- The delinquent tax on the income tax, etc. to be paid as a result of transfer pricing taxation, etc. is exempted during the period of a grace of tax payment. However, it should be noted that such delinquent tax will be imposed during a period from the date of an adjustment by the tax authority to the date of an application for a grace of payment is not exempted.

#### Q4-2 Who can apply for a grace of tax payment?

- An individual or a corporation can apply for a grace of tax payment in accordance with the provisions concerned of the Act on Special Measures Concerning Taxation if all of the following requirements are met:
  - ① The individual or the corporation has been subject to transfer pricing taxation, etc. in Japan.
  - ② The individual or the corporation has made a MAP request regarding the taxation referred to in ① pursuant to the provisions of an applicable tax treaty.
  - ③ The amount of income tax or corporation tax and local corporation tax regarding the application for the grace of tax payment in the amount of income tax, etc. to be paid as a result of taxation referred to in ① (income tax, etc. related to the



grace of tax payment) are covered in the MAP initiated between the NTA and the treaty partner after receiving the MAP request referred to in ②.

- ④ At the time of filing the application, the individual or the corporation does not have any delinquent national taxes other than the amount of tax referred to in ③.
  - ⑤ The individual or the corporation deposits a security equivalent to the amount of the income tax, etc. equivalent to the grace of tax payment in principle.
- If you are going to apply for a grace of tax payment, please inform the MAP Office of that fact in the course of a pre-filing consultation.
  - Please check the applicable box (i.e. check “yes”) in the Application for the Mutual Agreement Procedure to indicate that you will apply for a grace of tax payment.

**Q4-3 What are the procedures for a grace of tax payment?**

- An application for a grace of tax payment has to be made by filing two sets of the “Application for the Grace of Tax Payment” with the attachments (See Q4-4) to the relevant Tax Office. In addition to that, the applicant has to deposit a security (See Q4-5).
- Please see “[Application for the Grace of Tax Payment](#)” (Only available in Japanese)

**Q4-4 What kind of materials are required for the application for the grace of tax payment?**

- Please attach two sets of the following materials to the Application for the Grace of Tax Payment:
  - ① A document showing that a MAP request has been made to the competent authority of Japan or a treaty partner on the grounds that an applicant has been subject to transfer pricing taxation, etc. in Japan (if a MAP request has been made to the competent authority of the treaty partner, Japanese translation of the application)
  - ② A document showing that the taxes related to the grace of tax payment has resulted from transfer pricing taxation, etc. in Japan and has been covered in the MAP initiated between the NTA and the treaty partner after receiving the MAP request referred in ①.

**Q4-5 What kind of security should a taxpayer deposit along with an application for a grace of tax payment?**

- The following items listed could be dealt with security for a grace of tax payment

pursuant to Article 50 [Kinds of Security] of the Act on General Rules for National Taxes:

- ① Government bonds and local government bonds,
- ② Corporate bonds (including bonds issued by corporations established under special acts) and other securities that the District Director of the relevant Tax Office approves as reliable,
- ③ Land,
- ④ Buildings, living trees, and registered vessels, aircrafts, propeller planes, automobiles and construction machines that have been insured,
- ⑤ Railway foundations, factory foundations, mining foundations, streetcar foundations, canal foundations, fishery foundations, port transportation foundations, road transportation foundations and tourist foundations,
- ⑥ A guarantee by a guarantor whom the relevant District Director of the Tax Office approves as reliable,
- ⑦ Money.

\* For further information, please see Section 2 of Chapter 4 of the “Directive on the Handling of the Grace of Tax Payment, etc.”.

○ When an applicant deposits security, the documents listed in Section 2 of Chapter 4 of the Commissioner’s Directive on the Handling of the Grace of Tax Payment specified in each of security provided have to be submitted in addition to the following documents:

- ① Security Deposit Form, Form6-2
- ② In cases where assets owned by a third party are deposited as security, a statement from the third party of consent to the deposit of those assets and a certificate of the seal impression of the third party,
- ③ Where the security is owned by corporation or a person with limited legal capacity prescribed in paragraph 1 of Article 20 of the Civil Code, either a document certifying the qualifications of the representative of the corporation, the legal representative (the special representative where the act of representation falls under Article 826 of the Civil Code), the curator or the assistant of the person, or a document showing consent of the curator or the assistant of the person to provide the security, and a certificate of seal impression of the representative of the corporation, the legal representative, the curator or the assistant of the person,
- ④ Where a guarantee by a corporation (including third party mortgage or pledge) falls under Article 356, Article 365 or Article 595 of the Companies Act, a document certifying such guarantee has been approved at the shareholders’

meeting, the board of directors or by a majority of the partners of the corporation.

**Q4-6** What kind of information will be provided by the MAP office after filing the applications for the grace of tax payment?

- Whether the application filed meets all of the requirements (See Q4-2) for the grace of tax payment will be examined considering other relevant information including attachments (See Q4-4) and the documents related to the deposited security (See Q4-5). When granting a grace of tax payment, the relevant RTB will notify the taxpayer of such fact, the amount under the grace period and other necessary matters by sending a Notification That a Grace of Tax Payment Has Been Granted.
- If the relevant RTB does not grant a tax payment grace period, it will notify the taxpayer, if any, the guarantors and third party mortgagors or pledgers, of such fact by sending a Notification That a Grace of Tax Payment Has Not Been granted.

**Q4-7** What items should taxpayers pay attention to during the period of the grace of tax payment?

- The Certificate of Tax Payment Type 3 (certifying that there is no amount of unpaid taxes) cannot be issued during the period of the grace of tax payment.
- It should be noted that refund of tax paid during the period of the grace of tax payment cannot be appropriated for the amount of taxes related to the grace of tax payment, but will be directly paid to the taxpayer.

**Q4-8** Our company has been granted grace of tax payment on two or more MAP cases. Recently, we received the notification from the MAP Office saying that the both competent authorities reached an agreement on some of MAP cases, but the others are still in progress. In this case, how will the grace of tax payment granted be treated?

- In such a case, the grace of tax payment regarding that part of MAP cases will not be allowed on or after the date on which one month has elapsed after the notification relating to the agreement referred above.
- In this case, the relevant RTB will notify the amount of taxes related to the grace of tax payment regarding the rest issues of the MAP cases to the taxpayer and, if any, the guarantors and third party mortgagors or pledgers by sending a “Notification That the Amount of Income Tax, etc. Related to the Grace of Tax Payment Has Been Changed”.

**Q4-9 Are there any possibility to revoke the grace of tax payment?**

- The relevant RTB may revoke the grace of tax payment where:
  - ① the taxpayer has withdrawn the MAP request set forth;
  - ② the taxpayer does not provide the required documents for a MAP consultation;
  - ③ where there is a fact that falls under the items of paragraph 1 of Article 38 of the Act on General Rules for National Taxes, it is found to be impossible for the taxpayer to pay the tax related to the grace of tax payment in full within the period of the grace of tax payment;
  - ④ the taxpayer does not follow an order issued by the Regional Commissioner pursuant to paragraph 1 of Article 51 of the Act on General Rules for National Taxes regarding the security deposited for the tax related to the grace of tax payment;
  - ⑤ it is found that the taxpayer is delinquent in paying national tax other than the amount of tax related to the grace of tax payment after granting the grace of tax payment, except where the Regional Commissioner finds there is an inevitable reason for that new delinquent tax of the taxpayer;
  - ⑥ it is found to be inappropriate to maintain the grace of tax payment due to any change in the state of the taxpayers' property or other circumstances.
- Where a grace of tax payment granted has been revoked, the relevant RTB will notify that fact to the taxpayer and, if any, the guarantors and third party mortgagors or pledgers by sending a Notification That the Grace of Tax Payment Has Been Cancelled.

**Q4-10 With respect to local taxes, are there any systems which correspond to the grace of tax payment mentioned above (Q4-1 through Q4-9)?**

- As for local taxes as well, there is a similar system which corresponds to the grace of tax payment relating to transfer pricing taxation. Specifically, where a taxpayer who has been subject to transfer pricing taxation, etc. in Japan and has requested a MAP assistance regarding such taxation, upon request from the taxpayers, a certain period of a grace of collection of local taxes (i.e., prefectural resident tax, municipal inhabitant tax and business tax) may be granted up to a certain amount of local taxes and additional taxes to be paid as a result of such taxation (grace of collection of local taxes).
- Please check the applicable box (i.e. check "yes") in the Application for the Mutual Agreement Procedure to indicate that you will apply for a grace of collection of local taxes.

- For further information about the grace of collection of local taxes, please ask the local tax authority relevant to your place of tax payment since it has jurisdiction over a grace of collection of local taxes.

#### **5. The MAP Provided for in the private-sector tax Agreement between the Interchange Association (Japan) and the Association of East Asian Relations (Taiwan) FAQ**

Q5-1 Please provide information about the MAP described in the “Agreement between the Interchange Association and the Association of East Asian Relations for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income” (hereinafter referred to as “Agreement”).

- In relation to Taiwan, a MAP provisions are provided for in Article 24 of the Agreement\*.
  - \* Relevant domestic legislation has been established to implement the provisions of the Agreement in Japan.
- With regard to the mutual agreement procedure provided for in Article 24 of the Agreement, the details of procedure is established in the Commissioner’s Directive on the Treatment of Article 24 (Mutual Agreement Procedure) of the Agreement.
- The procedures for a MAP regarding Taiwan is basically similar to those of a MAP provided for in general tax treaties. However, there are some differences between a MAP regarding Taiwan and a MAP provided for in the general tax treaties. In particular, it should be noted that, where the contents of a resolution for a MAP regarding Taiwan falls under paragraph 1 of Article 10, paragraph 1 of Article 14 or paragraph 1 of Article 30 of the Mutual Exemption Law for Income of Foreign Resident, etc., the taxpayer has to file an “Application under Article 4, etc. of the Ministerial Ordinance for Enforcement of the Mutual Exemption Law for Income of Foreign Residents, etc.” in order to get the confirmation of the Commissioner of the National Tax Agency in relation to the resolution for a MAP.
- For more information about the procedure for a MAP regarding Taiwan, please see the “Commissioner’s Directive on the Treatment of Article 24 (Mutual Agreement Procedure) of the Agreement”. (Only available in Japanese)