



**ZAMBIA
REVENUE
AUTHORITY** | *My Tax
Your Tax
Our Destiny*

MUTUAL AGREEMENT PROCEDURE

PRACTICE NOTE
NO. **3** /2022

*Provides Procedures for Requesting Competent Authority
Assistance under Tax Treaties*

Vision

A world class model of excellence in revenue administration and trade facilitation.

Mission

To optimise and sustain revenue collection and administration for a prosperous Zambia.

Our Values

Our commitment to serving Government, taxpayers, employees and other stakeholders is reflected in our Corporate Values:

- ▶ Taxpayer Focus
- ▶ Integrity
- ▶ Professionalism
- ▶ Innovation
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1.0 FOREWORD

This **PRACTICE NOTE** lays out the Commissioner-General's requirements under Section 74 (1)(b) of the Income Tax Act Chapter 323 of the Laws of Zambia (hereinafter referred to as "the Act") and in accordance with the Tax Treaties that contain the Mutual Agreement Procedure (MAP) Article.

This Practice Note introduces administrative procedures in dispute resolution through the Competent Authority for Mutual Agreement Procedure. It does not in any way purport to replace the provisions of the Act and Tax Treaties that Zambia has with other jurisdictions. It also prescribes the information required and describes the method of filing in order to activate a taxpayer's right to request assistance from Zambia's Competent Authority.

This Practice Note is not intended to be prescriptive or exhaustive in the requirements for dispute resolution under MAP. The Zambia Revenue Authority will use its best endeavours to resolve the matter unilaterally or bilaterally (reaching an agreement with the foreign tax authority).



Dingani Banda
COMMISSIONER-GENERAL

ACKNOWLEDGEMENTS

The Zambia Revenue Authority would like to express its gratitude to the U.S. Treasury, Office of Technical Assistance, for their invaluable contributions to the development of this Practice Note.

Furthermore, some of the procedures described in this Practice Note are adopted from the African Tax Administration Forum (ATAF) Suggested Approach on Mutual Agreement Procedures and Organisation for Economic Co-operation and Development (OECD) Manual on Effective Mutual Agreement Procedures. In addition, the United States Internal Revenue Service (IRS) Procedures for Requesting Competent Authority Assistance under Tax Treaties are duly acknowledged.

COMMENTARY

1.0 DEFINITIONS

For purposes of this Practice Note, the following terms have the meanings set forth in this section.

Arbitration	Arbitration means the conduct of proceedings for the determination of a dispute through an arbitrator where the two Competent Authorities fail to agree on an issue.
Arbitration Settlement ("Award")	The decision made by an independent arbitrator when the two Competent Authorities cannot agree, and the case goes to binding arbitration. The decision will then be binding on both parties and this "award" is referred to the arbitrator's settlement.
"Competent Authority"	"Zambian Competent Authority" or the "Foreign Competent Authority".
"Competent Authority Issue"	An issue that can be resolved by the Zambian Competent Authority, typically under the Mutual Agreement Procedure Article;
"Competent Authority Request"	A request to file for the assistance of the Zambian Competent Authority under the Mutual Agreement Procedure;
"Foreign Competent Authority" or "Other Competent Authority"	Competent Authority of a treaty partner;
"Mutual Agreement Procedure" "MAP"	A means through which competent authorities consult to resolve disputes regarding the application of tax treaties;
"Tax Treaty" or "Treaty"	An agreement between Zambia and its respective partners for the avoidance of double taxation and the prevention of fiscal evasion;
"Treaty Partner"	A jurisdiction with which Zambia has a tax treaty (with a MAP Article); and
"Zambian Competent Authority"	The Commissioner General of the Zambia Revenue Authority or the Commissioner General's authorised representative.

2.0 INTRODUCTION

Most of Zambia's bilateral tax treaties contain a Mutual Agreement Procedure (hereinafter referred to as "MAP") Article that provides for a dispute resolution mechanism by raising an issue which the taxpayer considers to be "not in accordance with the treaty" or against the treaty with an official within Zambia Revenue Authority (ZRA) known as the "Competent Authority." The MAP Article contains procedures that allow the Competent Authorities of treaty partners to interact, with the aim of resolving tax treaty disputes in line with the double taxation agreements in force. The disputes may be on account of inconsistencies in the interpretation and application of a treaty. This Practice Note describes the method of filing a request for MAP and information required in order to activate a taxpayer's right to request the assistance of Zambia's Competent Authority. The MAP Article does not compel the Competent Authorities to reach an agreement and resolve tax disputes but instead Competent Authorities are encouraged to use their best endeavours to reach an agreement.

A taxpayer may request the Competent Authority in the country of residence or the country where the taxpayer is a national for assistance under the MAP Article in cases where the taxpayer considers that the actions of one or both jurisdictions' tax administration results or will result in taxation not in accordance with a tax treaty. It is important to note that MAP must be used where there has been compliance with all procedures as provided for in the MAP Article. Disputes which can be resolved by other tax treaty articles should not be subjected to MAP.

3.0 TIMEFRAME FOR FILING REQUESTS

Tax treaties that have the MAP Article, require persons to file their requests with either of the two Competent Authorities within the time frame stipulated in the treaty. For example, the Zambia/ United Kingdom (UK) tax treaty has a time limit of 3 years from the first notification of the action resulting in taxation not in accordance with the provisions of the treaty. Therefore, dispute resolutions under MAP in relation to the Zambia/United Kingdom tax treaty will not be commenced after the expiry of 3 years from the first time the taxpayer became aware of the action resulting in taxation not in accordance with the provisions of the treaty.

Competent Authorities should endeavour to reach an agreement to resolve the dispute within the time frame stipulated in the treaty. Where a treaty provides for arbitration, any unresolved issues arising from the case shall be submitted to arbitration if either Competent Authority so requests. The unresolved issues shall not, however, be submitted to arbitration if a decision on the issues has already been rendered by a court or administrative tribunal of either State. The Arbitration Settlement (Award) shall be binding on both States and shall be implemented notwithstanding any time limits in the domestic laws of the States. This shall be on condition that both Competent Authorities do not agree on a different solution

within the stipulated time frame after the Award has been communicated to them or the taxpayer directly affected by the case does not reject the mutual agreement that implements the arbitration decision.

4.0 LEGAL FRAMEWORK

The legal framework for this Practice Note is premised on Section 74 (1)(b) of the Income Tax Act along with the MAP Articles in the respective Treaties that Zambia has entered into. Section 74(1)(b) states as follows:

The President may enter into an agreement, which may have retrospective effect, with the Government of any other country or territory-

(b) for the exchange of information on tax matters or for mutual assistance in tax matters with the objective of rendering reciprocal assistance-

- (i) in the determination of credits and exemptions in respect of Zambian tax and foreign tax;*
- (ii) in the provision of data on fraud, civil and criminal tax offences;*
- (iii) in the administration and collection of taxes under the tax laws of the Republic and such other country or territory;*
- (iv) in the carrying out of tax examinations in Zambia or abroad; and*
- (v) in the carrying out of simultaneous or joint tax examinations.*

There is an Article in most tax treaties that Zambia has signed which provides for accessing of MAP. The MAP Article where present in the treaty and Section 74 (1)(b) outlined above will constitute the legal framework for MAP.

Note:

MAP will not include 74(1)(b)(ii) as the process does not include assistance in the provision of data on fraud, civil and criminal tax offences.

4.1 CONFIDENTIALITY

Subsection 2 of section 74 requires that information received under the tax treaty must be treated with utmost confidentiality. Section 74, subsection 2 of the Income Tax Act states as follows:

- (2) Any information received by a country or territory under an agreement entered into under subsection (1) shall be treated as secret in the same manner as information obtained under the domestic laws of that country or territory and shall be disclosed only to persons or authorities involved in the assessment, collection enforcement, prosecution or determination of appeals in relation to, the taxes under this Act.*

The above provision has the effect that all the information obtained or generated during the MAP process is fully protected by the confidentiality provisions of

the Income Tax Act and the applicable tax treaty, specifically the Exchange of Information Article.

5.0 REQUIREMENTS FOR FILING COMPETENT AUTHORITY REQUESTS

This section sets forth the general requirements for filing Competent Authority requests. Unless otherwise indicated, the requirements of this section shall apply to all types of Competent Authority requests. The MAP request can either be initiated by the taxpayer or by the foreign Competent Authority.

The Competent Authority will not accept or continue to consider a taxpayer's request regarding any issue and taxable period under active or pending litigation with respect to the same taxpayer. The taxpayer is expected to submit a litigation status letter as confirmation that the taxpayer has no pending or active litigation before any national court or tribunal over the same issue in the request. In other words, the Competent Authority would not consider a request from the taxpayer where the same issue is before national courts or tribunals.

5.1 Information Required for Filing

A Competent Authority request should consist of a request letter and attachments. The contents of the request letter vary by the type of Competent Authority request, but generally it should consist of information about the taxpayer and about the Competent Authority issues involved in the request. The request letter must contain an introductory statement that states that the taxpayer seeks assistance of the Zambian Competent Authority.

The request must contain or respond to each of the required statements, descriptions, explanations, and other information as outlined in the checklist in Appendix I.

Note:

There are no fees charged by the Zambian Competent Authority for instituting a MAP case.

6.0 PROCEDURE FOR FILING THE REQUEST

6.1 Filing the Request

The taxpayer must provide 3 copies of its Competent Authority request as follows:

- i. original, printed submission containing signed originals of the request letter and attachments in duplicate; and

- ii. electronic copies of the contents of the original printed submission and attachments to be sent by email to the email address indicated below.

Email: MAP@zra.org.zm

Requests for MAP along with the original submissions must be addressed to the Competent Authority and sent to the address provided in this Practice Note.

7.0 OBLIGATIONS OF THE COMPETENT AUTHORITY

7.0.1 Before a MAP request can be accepted, the Competent Authority will verify that:

- i. there is a tax treaty in force (with a MAP article) with the other jurisdiction for which the taxpayer seeks relief;
- ii. in the case of a tax treaty that is no longer in force but had the MAP article, the request should only cover periods where the treaty was in force;
- iii. the MAP article in the treaty is applicable to the situation;
- iv. there is taxation or likely to be taxation that is not in accordance with the provisions of the tax treaty;
- v. the request has been made within the time frame provided in the tax treaty;
- vi. sufficient information required to evaluate the case has been submitted;
- vii. the MAP request has been submitted in accordance with the guidance provided in this Practice Note;
- viii. there is no pending or active litigation over the same issue in the request;
- ix. the taxpayer has met all the obligations as indicated in the Appendix 1.

7.0.2 The Competent Authority will accept MAP requests from taxpayers even before an audit is completed.

7.0.3 The Competent Authority will not consider incomplete or insufficient MAP requests. A request will be considered incomplete or insufficient if any of the information listed in Appendix 1 is not provided.

7.0.4 The Competent Authority should ensure that there is no direct taxpayer involvement in MAP discussions. This is because the discussions are between Competent Authorities as parties. However, if agreed by both parties, taxpayer involvement will only be where there is a need for clarification of facts or explanations of complex or specialised issues in the submission.

7.0.5 The Competent Authority should notify the taxpayer whether the MAP request has been accepted or rejected and reasons for the rejection should be provided. The decision must be communicated to the taxpayer not later than sixty (60) days from the time the MAP request was received.

8.0 UNILATERAL RESOLUTION

- a) The Competent Authority should commence their evaluation of a MAP case upon receiving a complete request from the taxpayer.
- b) Where possible, the Competent Authority should attempt to resolve the matter unilaterally. This can be done for cases where the Competent Authority considers that the request for relief is justified and the Competent Authority could provide relief to the taxpayer without consulting the other Competent Authority.

9.0 BILATERAL AGREEMENT

- a) Where the Competent Authority is not able to resolve the issue unilaterally, it will engage the other Competent Authority and endeavour to resolve the matter by agreement.
- b) Upon receipt of a request from the taxpayer, the Competent Authority will prepare a position paper to the other Competent Authority.
- c) The position paper should include the following:
 - i. date of receipt of the MAP request
 - ii. details of the taxpayer;
 - iii. the issue or transaction;
 - iv. charge year(s) in which the tax treatment is not in accordance with the tax treaty;
 - v. amount of income or tax adjusted;
 - vi. description of the exact nature of the issue;
 - vii. the relevant domestic laws and treaty articles;
 - viii. any supporting data; and
 - ix. the name of the Competent Authority in charge of the case and their contact details.
- d) Once a position paper has been communicated, the Competent Authority will discuss the case with the other Competent Authority. These discussions can take place via email correspondence, telephone, virtually or in some cases in person. All correspondence should be noted or documented and included in the case file. How a matter is dealt with will be considered on a case by case basis.
- e) Competent Authorities will endeavour to reach an agreement on a mutually acceptable resolution of the case.
- f) For complex cases, mediation or the use of experts may be a useful, informal mechanism to consider in order to resolve the issues.

- g) If the Competent Authority chooses to withdraw from a case, the taxpayer may then pursue other available legal remedies.
- h) For transfer pricing cases, the position paper should also include:
 - i. Functional Analysis;
 - ii. Transfer pricing method selected;
 - iii. Application of the methodology;
 - iv. The comparable(s) selected; and
 - v. The comparability adjustments made, if any.

10.0 AGREEMENTS BETWEEN COMPETENT AUTHORITIES

- a) Once a resolution is reached, the agreement between Competent Authorities will outline the extent to which each jurisdiction will provide relief and how the relief will be provided (e.g. amended assessment, credits, exemption etc.).
- b) Once the agreement between the Competent Authorities has been finalised, the taxpayer will be notified in writing of the decision and the agreement with an explanation of the result not later than thirty (30) days from the time the decision was reached.
- c) If a taxpayer is not satisfied with the agreement arrived at by the Competent Authorities, the taxpayer may reject it in writing not later than sixty (60) days from the time the decision is communicated. Even if the taxpayer is dissatisfied, the Competent Authority shall consider the case closed and advise the taxpayer accordingly. The decision of the Competent Authority is final. If the Competent Authority decision is rejected, the taxpayer may then pursue other available legal remedies.
- d) If the taxpayer accepts the agreement, the acceptance should be communicated in writing not later than thirty (30) days from the time the agreement is communicated to them. Thereafter a written confirmation of the agreement will be exchanged between Zambia and the other tax administration and provided to the taxpayer.
- e) The Competent Authority shall hold a meeting with the taxpayer where possible to discuss the outcome, the reasons for the outcome and feedback on the overall process.

11.0 ADDRESSES AND OTHER CONTACT INFORMATION FOR MUTUAL AGREEMENT PROCEDURE

The Competent Authority should be contacted using the postal and electronic addresses below in case of any queries concerning MAP:

Competent Authority

Commissioner – Direct Taxes Division

Zambia Revenue Authority

Revenue House

Kalambo Road

P.O. Box 35710

Lusaka, Zambia

All electronic copies must be sent to the email address below:

Email: MAP@zra.org.zm

APPENDIX I

Information Required for Filing a Competent Authority Request

#	Information Required
1	The name, address, phone number and taxpayer identification number of the taxpayer;
2	For transfer pricing cases, the name, address and, if possible, the taxpayer identification number of any related foreign taxpayer involved;
3	The name of the foreign tax administration involved and if possible, identification of the regional or local tax administration office that has made, or is proposing to make, the adjustment (if relevant);
4	The tax treaty article(s) that the taxpayer asserts is/are not being correctly applied, and the taxpayer's interpretation of the application of the article(s);
5	The charge year(s) or period(s) affected;
6	The relationship, situation, or structure of the transactions, issues, or related parties involved;
7	A summary of the facts and an analysis of the issues for which Competent Authority assistance is requested, including any specific issues raised by the tax administrations affecting the taxpayer and the related amounts (in both currencies and supported by calculations, if applicable);
8	For transfer pricing cases, documentation as described in domestic legislation of the taxpayer's state of residence, if available;
9	A copy of any other relevant Competent Authority request and the associated documents filed, or to be filed, with the Competent Authority of the other contracting state, including copies of correspondence from the other tax administration, copies of briefs, objections, etc;
10	An indication of whether the taxpayer or a predecessor to the taxpayer has made a prior request to the Competent Authority of either contracting state on the same or related issue;
11	A schedule of the time limitations in each jurisdiction (domestic as well as tax treaty time limits) in respect of the years for which relief is sought (in cases of multiple taxpayers, a schedule for each);
12	A statement indicating whether the taxpayer has filed a notice of objection, notice of appeal, refund claim, litigation status letter or comparable document in either of the relevant jurisdictions;
13	If consent has not already been provided for a person to act as an authorised representative, a signed statement that a representative is authorised to act for a taxpayer in making the request;
14	A copy of any settlement or agreement reached with the other jurisdiction which may affect the MAP process;
15	The taxpayer's views on any possible bases on which to resolve the issues;
16	Any other facts that the taxpayer may consider relevant; and
17	<p>A declaration by the taxpayer confirming the completeness and accuracy of facts presented in the MAP request should be made as provided below:</p> <p style="text-align: center;"><i>"I declare that I have examined this request, including accompanying documents, and, to the best of my knowledge and belief, the facts presented in support of the Competent Authority request are true, correct, and complete."</i></p>

APPENDIX II

Tax Treaties and Mutual Agreement Procedures Applicability

No.	Country	In Force	Map Article	Time Limit	Domestic Law Applies
1	Botswana	14/08/2015	Article 25	3 Years	No
2	Canada	28/12/1989	Article 24	2 Years	No
3	China	30/06/2011	Article 25	3 Years	No
4	Denmark	18/10/1974	Article 25	N/A	Yes
5	Finland	17/05/1985	Article 26	3 Years	No
6	France	30/07/1951	N/A	N/A	Yes
7	Germany	08/11/1975	Article 25	N/A	Yes
8	India	18/01/1984	Article 26	3 Years	No
9	Ireland	23/12/2015	Article 25	3 Years	No
10	Italy	30/03/1990	Article 24	N/A	Yes
11	Japan	23/01/1971	Article 25	N/A	Yes
12	Kenya	27/08/1968	N/A	N/A	Yes
13	Mauritius	15/06/2012 ¹	Article 24	3 Years	N/A
14	Morocco	08/02/2021	Article 25	3 Years	No
15	Netherlands	31/03/2018	Article 24	N/A	Yes
16	Norway	22/03/1973	Article 25	N/A	Yes
17	Seychelles	04/01/2013	Article 24	3 Years	N/A
18	South Africa	31/08/1956	N/A	N/A	Yes
19	Sweden	18/03/1974	Article 24	N/A	Yes
20	Switzerland	01/01/2020	Article 24	3 Years	No
21	Tanzania	02/03/1968	N/A	N/A	Yes
22	Uganda	24/08/1968	N/A	N/A	Yes
23	United Kingdom	20/07/2015	Article 25	3 Years	N/A

¹Terminated in 2020'

