UAE TAX ALERT

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UAE Introduces New MAP Guidance – A Welcome Step Towards Greater Tax Certainty

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UAE Ministry of Finance releases a Mutual Agreement Procedure Guidance

The UAE Ministry of Finance (MoF) has issued official guidance on the Mutual Agreement Procedure (MAP), reinforcing the UAE's commitment to global tax standards and aligning domestic tax laws with international frameworks.

Grounded in Article 25 of the OECD Model Tax Convention, Article 34(11) of the UAE Corporate Tax Law, and guided by the OECD's Manual on Effective Mutual Agreement Procedures, the MAP framework provides a clear and structured mechanism for resolving economic double taxation under the UAE's network of double tax treaties (tax treaties).

To drive strategic insights for businesses operating in UAE, we have outlined below a quick and careful analysis of the new MAP guidelines.

1. An Overview of MAP: Importance and Application

MAP is a pragmatic alternative dispute resolution mechanism embedded in the tax treaties, designed to resolve cross-border tax disputes and prevent economic double taxation. It provides taxpayers with a clear, efficient process to address issues such as:

- Taxation inconsistent with the provisions of applicable tax treaties
- Economic double taxation scenarios
- Disputes involving transfer pricing, dual residency, and Permanent Establishments (PEs)
- Interpretation and application issues of tax treaties.

The UAE ratified the OECD Multilateral Instrument (MLI) on 27 June 2018, adopting its MAP provisions. This allows automatic updates to UAE's tax treaties with other MLI signatories where treaties are "covered tax agreements" and both parties align, enhancing MAP's consistency and effectiveness across jurisdictions.

Separately, the MAP framework in UAE will be administered by an independent Competent Authority (UAE CA) from the Federal Tax Authority (FTA). This independent setup fosters objectivity and specialized knowledge, promoting fairness and ensuring expert handling of tax treaty-related disputes.

2. MAP coverage for years prior to UAE Corporate Tax implementation

The UAE's Corporate Tax regime, introduced under Federal Decree-Law No. (47) of 2022, became effective for financial years starting on or after 1 June 2023. However, MAP is not limited to disputes arising after such a date.

As the UAE's tax treaty network predates the introduction of its Corporate Tax regime, the MAP shall be potentially invoked for cross-border tax disputes, including transfer pricing adjustments for years before Corporate Tax was implemented in the UAE. However, eligibility to apply for MAP shall be assessed on a case-by-case basis.

3. Cases fit for MAP and application timeline

MAP can be requested when actions by one or both jurisdictions lead to taxation not aligned with treaty provisions, causing economic double taxation. Common eligible scenarios include:

- **Transfer Pricing adjustments:** When adjustments by the UAE FTA or foreign tax authorities cause double taxation without corresponding relief.
- **Dual Residency conflicts:** Where a taxpayer is treated as a resident in more than one country, leading to double taxation.
- **Profit attribution to PEs:** Profit adjustments related to branches or PEs across jurisdictions causing double taxation.
- **Multilateral Disputes:** Complex cases involving multiple countries, often in transfer pricing profit splits, handled jointly by all relevant Competent Authorities.
- **Bona-fide self-initiated adjustments:** Good-faith transfer pricing adjustments made by taxpayers, supported by documentation, that result in double taxation.
- **Domestic / anti-abuse provisions:** Situations where domestic anti-abuse rules conflict with treaty provisions, subject to case-specific assessment; note that purely domestic law interpretations fall outside MAP.

UAE tax treaties, reflecting the OECD Model Tax Convention, require MAP cases to be submitted within three years from the first notification of the action causing double taxation. However, taxpayers may file a MAP request even before formal notification if it's probable that an adjustment will be made (e.g. during an ongoing audit).

4. How does it work?

Steps	Action Items
▶ **Step 1** – Determination of eligibility	▶ Identify if there's taxation not in accordance with the tax treaties ▶ Confirm that the issue falls within the scope of MAP provisions under the relevant tax treaties
▶ **Step 2 -** Prepare and File MAP Request	▶ Submit MAP claim to UAE CA ▶ Include all required information (e.g., taxpayer identity, relevant tax treaty article, facts, Transfer Pricing documentation if applicable) ▶ Application shall be filed within 3 years from the first notification of the disputed action. In some cases, application before first notification is permissible

Steps	Action Items
▶ **Step 3 -** UAE CA Assesses MAP claim	▶ UAE CA checks completeness, timeliness, and whether the objection is justified ▶ Responds to taxpayer within 2 months of submission
▶ **Step 4 –** Objection justified	▶ **Step 4a – Unilateral Relief:** UAE CA to endeavor to resolve the issue with FTA ▶ **Step 4b – Bilateral Negotiation:** If not, UAE CA engages with the other state's Competent Authorities to reach a mutual agreement
▶ **Step 5 –** Outcome	▶ Taxpayer is notified within **2 months** after a MAP agreement is reached ▶ Taxpayer shall accept or reject the outcome within **1 month**

5. Interaction with Domestic Remedies

- Taxpayers cannot pursue MAP and domestic litigation simultaneously for the same issue; to proceed with MAP, any ongoing domestic litigation may need to be suspended or withdrawn, and vice versa.
- Taxpayers may invoke MAP during an audit if they believe an adjustment will trigger double taxation. In such cases, MAP shall be pursued concurrently with the audit.
- Tax payment obligations remain during MAP proceedings; however, refunds may be granted if MAP results in relief.
- Penalties related to corporate tax liabilities resolved through MAP may be adjusted if the outcome is accepted.

6. Path to Resolution

- The target timeline for resolving a MAP case 24 months from the date of acceptance.
- Taxpayers have the right to accept or reject the MAP outcome. If accepted, any related domestic proceedings ought to be withdrawn.
- If the Competent Authorities cannot reach an agreement, arbitration may be pursued if permitted by the tax treaties; otherwise, the case will be closed, with domestic remedies still available.

7. MAP Readiness: What businesses should consider?

Businesses facing potential double taxation or tax treaty-related disputes should assess their position under the MAP framework and engage early with the UAE CA. To effectively navigate the MAP process:

- Act promptly to preserve your right to request MAP (within the 3-year window);
- Strategically assess the MAP option alongside domestic appeal or litigation pathways; and
- Maintain robust documentation and engage in clear, proactive communication with the Competent Authorities.

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