

Rule for the Mutual Agreement Procedure defined by the international agreement on the avoidance of double taxation

Article 1. General provisions

1. The taxpayer may the basis of the International Agreement on the Avoidance of Double Taxation (DTA) ratified by the Parliament of Georgia and in accordance with the “Rule for the Mutual Agreement Procedure defined by the international agreement on the avoidance of double taxation” (rule), to request the initiation of the Mutual Agreement Procedure (MAP). MAP can also be initiated when requested "in order to reduce the taxable base and prevent profit shifting related to the tax treaty on the introduction of measures" based on the provisions of the Multilateral Convention.
2. Under MAP, cases shall be considered, where a person is of the opinion that the actions of one or both of the Contracting States of the DTA result or will result for him in taxation not in accordance with the provisions of the that DTA, including:
 - a) international controlled transactions, independent of the inclusion of a provision in the applicable DTA similar to Article 9/2 of the OECD and UN MDTA;
 - b) permanent establishment;
 - c) dual residency of the taxpayer;
 - d) incorrect/abusive use of the provisions stipulated by the DTA.
3. The terms used in this rule shall be interpreted in accordance with the definitions of the relevant DTA.

Article 2. Initiation of Mutual Agreement Procedure

1. In order to request the initiation of a MAP, a taxpayer must submit a written request to the Georgian Competent Authority (GCA) in the form established by Annex 1 of this rule.
2. Where the requesting taxpayer is not a Georgian resident has applied to the GCA to initiate the MAP, the GCA shall notify the other Competent Authority (CA) and consult with it on the handling of such request.
3. The GCA in relation to the issues provided for in Annex 2 of the rule is the Ministry of Finance of Georgia or a Legal Entity under Public Law (LEPL) within the sphere of governance of the Ministry of Finance of Georgia - the Revenue Service.
4. The taxpayer has the right to present to the GCA his assessment regarding the issue under consideration.
5. The application shall be submitted to the GCA in physical or electronic form in Georgian or English language. Where the application is submitted in English, it shall be accompanied by a notarized translation in Georgian.

6. The application shall be submitted by the taxpayer within three years from the moment of discovery of non-compliance with the provisions of the DTA, unless the DTA constitutes otherwise.
7. In case of violation of paragraphs 1 and/or 6 of this Article, the application to initiate the MAP may be refused.
8. The acceptance of the application submitted by the GCA in the form prescribed by Annex 1 of the rule is considered to be the date of initiation of the MAP.
9. The initiation of the MAP shall not constitute a basis for limiting the use of legal protection mechanisms provided for by domestic legislation.
10. The GCA, as well as the CA of the other Contracting State, shall determine the issue subject to the MAP in accordance with the provisions of the DTA.

Article 3. Functions of the Competent Authority of Georgia

1. The GCA shall inform the taxpayer and the CA of the other Contracting State about the initiation of the MAP within one month after receiving the application in the form established by Annex 1 of this rule.
2. In case of refusal to initiate the MAP, the CA shall inform the taxpayer of the justified position within one month.
3. The GCA may, if necessary, request additional information from the taxpayer regarding the issue presented in the application submitted in the form prescribed by Annex 1 of the rule.
4. The GCA shall study the issue and assess the possibility of unilateral resolution of the case by it (unilateral stage). For this purpose, the CA may request from the relevant structural units the information/documentation that is important to resolve the issue under consideration.
5. If the GCA is able unilaterally make a satisfactory decision, it is obliged to execute it immediately and inform the taxpayer in writing within two weeks.
6. If the GCA is not able to solve the case unilaterally it shall inform the other CA of its position and thereby initiate the bi- or multilateral stage.
7. The bilateral or multilateral stage of the MAP is a procedure between the CAs.
8. The GCA shall, within two weeks, provide the taxpayer with information on the initiation of the bilateral or multilateral stage of the MAP.
9. The GCA shall inform the taxpayer about the reaching of an agreement (or lack thereof) between the CAs within two weeks.
10. The GCA may request a document from the CA of the other Contracting State, which reflects its position, if the reason for the initiation of the MAP is the actions of the relevant CA of the other State or the relevant CA of the other State possesses information related to the issue.
11. The GCA shall send a document reflecting its position to the CA of the other Contracting State, if the reason for initiating the MAP is the actions of the GCA or the GCA possesses information

related to the issue. If necessary, CA may use any form of communication to negotiate and share positions.

12. The GCA shall treat all information obtained during a MAP according to the provision in the domestic tax secrecy rules.

Article 4. Obligations of the Taxpayer

1. Taxpayers shall cooperate fully with the GCA by providing complete and accurate information when requested.

2. The taxpayer shall not have the right to get acquainted with the internal documents between the CAs.

3. The taxpayer shall not be present during the actual discussions between the CAs, as MAP is a government-to-government procedure, except for instances where this is explicitly requested by the CAs.

Article 5. Completion of Mutual Agreement Procedure

1. The requesting taxpayer can withdraw the request at any time. MAP shall end with the withdrawal of the request.

2. The CAs shall exchange final letters regarding the decision within a reasonable period of time, one explains the decision (agreement) reached, and the other represents approval of the decision.

3. If the GCA was not able to find a solution, it shall inform the taxpayer in writing within a reasonable period of time and additionally inform the taxpayer on the availability of other legal remedies.

4. The GCA shall complete the MAP within 24 months from the receipt of the application submitted in the form prescribed by Annex 1 of this rule.

5. The decision made by the GCA as a result of the MAP shall be implemented within three months after its adoption. If the DTA contains a relevant provision, enforcement shall be carried out regardless of the limitation periods provided by domestic law, but based on the consent of the taxpayer.

Application on initiation of Mutual Agreement Procedure

I. Applicant	
Name, Surname / Company Name	
Personal number / Identification number	
Date of birth/ date of registration	
Legal address	
Actual address	
Phone number	
e-mail	
II. Party(ies) involved in the operation	
Name, Surname / Company Name	
Personal number / Identification number	
Date of birth/ date of registration	
Legal address	
Actual address	
Phone number	
e-mail	
III. Representative of the applicant	
Name, Surname / Company Name	
Personal number / Identification number	
Actual address	
Phone number	
e-mail	
IV The reporting period	
V Limitation period related to the issue under review (in accordance with the domestic legislation of the State/States to the international agreement)	
VI Legal basis (relevant international agreement, including the provision(s) of the specific article(s) that the taxpayer believes have been improperly applied by one or both contracting parties)	

VII Actual circumstances		
VIII. The relationship between the applicant and the party(ies) participating in the operation		
IX Any documents received in relation to the issue under consideration (if any, attach to this application)		
Advanced ruling		
Advanced Pricing Agreement		
Court's ruling		
Other		
XI Decision received from another Competent Authority regarding the issue under consideration or related to it (if any, attach to this application)		
XII The application submitted to the Competent Authority of the other State regarding the initiation of the mutual agreement procedure (if any, attach to this application)		
XIII The position of the person presenting the application on the issue under consideration		
XIV List of documents attached to the application		
N	Name of the document	Number of pages
1		
2		
3		
XV Authorized person		
Signature	Name, Surname	Date

Information regarding Competent Authorities

1. The application for the initiation of the Mutual Agreement Procedure, which does not concern the issues covered by Articles 5, 7 and 9 of the Model Convention of the Organization for Economic Co-operation and Development (OECD), shall be submitted to the following address:

International Taxation Division
Tax and Customs Policy Department
Ministry of Finance of Georgia
16 Gorgasali Street
Tbilisi, Georgia, 0105
Telephone: +995 32 2 261355
E-mail: map@mof.ge

2. The application for the initiation of the Mutual Agreement Procedure concerning the issues covered by Articles 5, 7 and 9 of the Model Convention of the Organization for Economic Co-operation and Development (OECD) shall be submitted to the following address:

Legal Department
LEPL Revenue Service of the Ministry of Finance of Georgia
16 Gorgasali Street
Tbilisi, Georgia, 0105
Telephone: + 995 32 2 261 151
E-mail: map@mof.ge

The statement must be marked: "Mutual Agreement Procedure".