

Submission File

13 June 2018

South African Revenue Service
Private Bag X923
Pretoria
0001

BY E-MAIL: policycomments@sars.gov.za, shenson@sars.gov.za

Dear Vernie

SUBMISSION ON MAP Guide

1. We present herewith our comments on the draft Mutual Agreement Procedure (MAP) Guide on behalf of the South African Institute of Chartered Accountants' (SAICA) Transfer Pricing sub-committee.
2. As always, we thank the South African Revenue Service (SARS) for the ongoing opportunity to provide constructive comments to SARS Legal Counsel. SAICA believes that a collaborative approach is best suited in seeking actual solutions to complex challenges.
3. Should you wish to clarify any of the above matters please do not hesitate to contact us.

Yours sincerely

Christian Wiesener

Christel van Wyk

Chairperson:

Project Director: Tax

SAICA Transfer Pricing sub-committee

South African Institute of Chartered Accountants



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Annexure A

Typing errors

4. We advise that there are a number of typing errors that need to be corrected.

5. Submission: As the Guide is in draft, we assumed these will be corrected before the final Guide is issued.

Vienna Convention

6. On page 4 the Vienna Convention is referred to.

7. Submission: We propose that a footnote is inserted in terms of which it is made clear that South Africa has not signed the Convention but nevertheless adheres to its principles.

The MLI

8. On page 16 it is stated that South Africa is a signatory to the MLI. However, it has not yet ratified the MLI so it is not effective for South Africa as yet.

9. Submission: We request that this is clarified.

Examples in the Guide

10. On page 4 a number of typical examples are given of situations where a MAP process may be appropriate. However, on page 8, where instances are set out when mutual agreement procedure would normally apply, only four examples are given (and some of them differ from the examples on page 4).

11. Submission: We propose that the examples should be set out consistently if the same examples are used elsewhere in the Guide.

12. Alternatively, perhaps paragraph 2.1 should, rather than state that “examples are...”, state that “the following types are to be looked at in detail in this section”.

Residency

13. On page 8 it is stated that the taxpayer must obtain a certificate of residency from both jurisdictions.

14. Submission: Assuming this means “tax residency”, we propose that this is clarified.

15. We further propose that the Guide should include advice to taxpayers as to the process that should be followed to obtain such a certificate from SARS.

Place of effective management

16. On page 9 various criteria (not exhaustive) are set out for determining place of effective management.

17. Submission: We submit that there is little value in including this in the Guide as reference has in any event been made to IN6, which is considered to be far more comprehensive. It is therefore unclear why this is included.

Time frames

18. On page 11 it is indicated that the MAP application must be submitted within three years of notification. Notification is described as finalisation of enquiry giving rise to an assessment. However, it is earlier in the IN pointed out that if objection has been lodged SARS may delay dealing with the MAP until the outcome of the objection in order to establish if there is actually double tax. This is repeated on page 13.
19. As both objection and MAP processes are costly and time consuming for a taxpayer surely one process should take prevalence i.e. EITHER the first notification should be the date that the objection and appeal process is finalised confirming tax is payable OR the objection and appeal process should be suspended pending the outcome of the MAP (which would then resolve is the tax is payable in this country at all). This latter option is 'recommended' on page 13.

20. Submission: We propose that the Guide should not 'recommend', but should instead prescribe the approach SARS will take, as we consider that the "recommendation" leaves too much uncertainty.

Addresses

21. On page 15, relevant email addresses are mentioned for submission of a MAP request. These are not however provided in that section.

22. Submission: We propose that reference should be made to paragraph 4.6 for the ease of the reader.

Referral to website

23. Paragraph 4.6 appears to render the Guide redundant.

24. Submission: We question why reference should be made to the website, as what should be followed, when all the requirements are presumably set out in the Guide. We will appreciate if this is duly clarified.