



MUTUAL AGREEMENT PROCEDURES

Making Dispute Resolution Mechanisms More Effective



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◆ Preface

Provisions corresponding to Article 25 of the Model Tax Convention on Income and on Capital of the Organization for Economic Development and Cooperation merely lays down general rules concerning the mutual agreement procedure. This Manual is intended to clarify the purpose of such rules, and also to amplify them, if necessary, by referring, in particular, to the rules and practices followed at international level in the conduct of mutual agreement procedures for dealing with disputed claims regarding taxes.

◆ Introduction

The undertaking to resolve by mutual agreement cases of taxation not in accordance with the convention is an integral part of the obligations assumed by a contracting State in entering into a tax treaty and must be performed in good faith. In particular, the requirement in provisions corresponding to paragraph 2 of Article 25 that the competent authority “shall endeavour” to resolve the case by mutual agreement with the competent authority of the other contracting State means that the competent authorities are obliged to seek to resolve the case in a fair and objective manner, on its merits, in accordance with the terms of the convention and applicable principles of international law on the interpretation of treaties.

1 | Definition of the Mutual Agreement Procedure

The rules laid down in provisions corresponding to paragraphs 1 and 2 of Article 25 provide for the elimination in a particular case of taxation which does not accord with the convention. As is known, in such cases it is normally open to taxpayers to litigate in the tax court, either immediately or upon the dismissal of their objections by the taxation authorities. When taxation not in accordance with the convention arises from an incorrect application of the convention in both States, taxpayers are then obliged to litigate in each State, with all the disadvantages and uncertainties that such a situation entails. So provisions corresponding to paragraph 1 make available to taxpayers affected, without depriving them of the ordinary legal remedies available, a procedure which is called the mutual agreement procedure because it is aimed, in its second stage, at resolving the dispute on an agreed basis, i.e. by agreement between competent authorities, the first stage being conducted exclusively in one of the contracting States from the presentation of the objection up to the decision taken regarding it by the competent authority on the matter.

In any case, the mutual agreement procedure is clearly a special procedure outside the domestic law. It follows that it can be set in motion solely in cases coming within provisions corresponding to paragraph 1, i.e. cases where tax has been charged, or is going to be charged, in disregard of the provisions of the convention. So where a charge of tax has been made contrary both to the convention and the domestic law, this case is amenable to the mutual agreement procedure to the extent only that the convention is affected, unless a connecting link exists between the rules of the convention and the rules of the domestic law which have been misapplied.

2 | Status under Domestic Law of a Mutual Agreement Reached Pursuant to Article 25

The principles of international law for the interpretation of treaties, as embodied in Articles 31 and 32 of the Vienna Convention on the Law of Treaties, allow domestic courts to take account of an agreement reached pursuant to provisions corresponding to Article 25. The object of such provisions is to promote, through consultation and mutual agreement between the competent authorities, the consistent treatment of individual cases and the same interpretation and/or application of the provisions of the convention in both States. Those provisions also authorize the competent authorities to resolve, by mutual agreement, difficulties or doubts as to the interpretation or application of the convention. Such a mutual agreement, reached pursuant to the express mandate contained in provisions corresponding to paragraph 3 of Article 25 represents objective evidence of the competent authorities' mutual understanding of the meaning of the convention and its terms. For these reasons, an agreement reached by the competent authorities under provisions corresponding to Article 25 must be taken into account for purposes of the interpretation of the convention.

In addition, there are some cases where the application of certain treaty provisions has been expressly delegated by the contracting States to the competent authorities and the agreements reached by the competent authorities in these matters legally govern the application of these provisions. Provisions corresponding to subparagraph d) of paragraph 2 of Article 4, for example, provides that the competent authorities shall resolve by mutual agreement certain cases where an individual is a resident of both contracting States under provisions corresponding to paragraph 1 of that Article. Some conventions similarly delegate to the competent authorities the power to determine jointly the status of various entities or arrangements for the purposes of certain treaty provisions or the power to supplement or modify lists of entities, arrangements or domestic law provisions referred to in these treaties.

3 | Scope of the Mutual Agreement Procedure

As regards the scope of the mutual agreement procedure, it is necessary to consider the following:

3.1 | Application of the Mutual Agreement Procedure in Cases of Double Taxation

As regards the cases of double taxation, it is necessary to consider the following:

3.1.1 | Cases of Juridical Double Taxation

In practice, the procedure applies to cases where the measure in question leads to double taxation which it is the specific purpose of the convention to avoid. Among the most common cases, mention must be made of the following:

- Questions relating to the attribution of profits to a permanent establishment under provisions corresponding to paragraph 2 of Article 7;
- The taxation in the State of the payer – in case of a special relationship between the payer and the beneficial owner – of the excess part of interest and royalties, under provisions corresponding to Article 9, paragraph 6 of Article 11 or paragraph 4 of Article 12;
- Cases of application of legislation to deal with thin capitalisation when the State of the debtor company has treated interest as dividends, insofar as such treatment is based on clauses of a convention corresponding for example to Article 9 or paragraph 6 of Article 11;
- Cases where lack of information as to the taxpayer's actual situation has led to misapplication of the convention, especially in regard to the determination of residence (provisions corresponding to paragraph 2 of Article 4), the existence of a permanent establishment (provisions corresponding to Article 5), or the temporary nature of the services performed by an employee (provisions corresponding to paragraph 2 of Article 15).

3.1.2 | Cases of Economic Double Taxation

Provisions corresponding to Article 25 also provides machinery to enable competent authorities to consult with each other with a view to resolving, in the context of transfer pricing problems, not only problems of juridical double taxation but also those of economic double taxation, and especially those resulting from the inclusion of profits of associated enterprises under provisions corresponding to paragraph 1 of Article 9; the corresponding adjustments to be made in pursuance of provisions corresponding to paragraph 2 of the same Article thus fall within the scope of the mutual agreement procedure, both as concerns assessing whether they are well founded and for determining their amount.

This in fact is implicit in the wording of provisions corresponding to paragraph 2 of Article 9 when the bilateral convention in question contains a clause of this type. When the bilateral convention does not contain rules similar to those of paragraph 2 of Article 9 the mere fact that contracting States inserted in the convention the text of Article 9, as limited to the text of paragraph 1 indicates that the intention was to have economic double taxation covered by the convention. As a result, the State of Qatar considers that economic double taxation resulting from adjustments made to profits by reason of transfer pricing is not in accordance with – at least – the spirit of the convention and falls within the scope of the mutual agreement procedure set up under provisions corresponding to Article 25.

Whilst the mutual agreement procedure has a clear role in dealing with issues arising as to the sorts of adjustments referred to in provisions corresponding to paragraph 2 of Article 9, it follows that even in the absence of such provisions, the State of Qatar will seek to avoid double taxation, including by giving corresponding adjustments in cases of the type contemplated in paragraph 2. The State of Qatar regards a taxpayer initiated mutual agreement procedure based upon economic double taxation contrary to the terms of provisions corresponding to Article 9 as encompassing issues of whether a corresponding adjustment should have been provided, even in the absence of provisions similar to paragraph 2 of Article 9.

3.2 | Application of the Mutual Agreement Procedure in Cases of Taxation in Contravention of a Rule in the Convention

The mutual agreement procedure is also applicable in the absence of any double taxation contrary to the convention, once the taxation in dispute is in direct contravention of a rule in the convention. Such is the case when one State taxes a particular class of income in respect of which the convention gives an exclusive right to tax to the other State even though the latter is unable to exercise it owing to a gap in its domestic laws. Another category of cases concerns persons who, being nationals of one contracting State but residents of the other State, are subjected in that other State to taxation treatment which is discriminatory under provisions corresponding to paragraph 1 of Article 24.

3.3 | Application of the Mutual Agreement Procedure in Cases Where the Transaction to Which the Request Relates Is Regarded as Abusive

The State of Qatar will not deny the taxpayer the ability to initiate the mutual agreement procedure under provisions corresponding to paragraph 1 of Article 25 in cases where the transactions to which the request relates are regarded as abusive. Perceived abusive situations can go to the mutual agreement procedure. The simple fact that a charge of tax is made under an avoidance provision of domestic law would not be a reason to deny access to mutual agreement, even where serious violations of domestic laws resulting in significant penalties are involved.

Qatar will then provide access to mutual agreement procedure in cases in which there is a disagreement between the taxpayer and the tax authorities making the adjustment as to whether the conditions for the application of a treaty anti-abuse provision have been met or as to whether the application of a domestic law anti-abuse provision is in conflict with the provisions of a treaty.

3.4 | Application of the Mutual Agreement Procedure in Multilateral Cases

The combination of bilateral tax conventions concluded among several States may allow the competent authorities of these States to resolve multilateral cases by mutual agreement under provisions corresponding to paragraphs 1 and 2 of Article 25 of these conventions. A multilateral mutual agreement may be achieved either through the negotiation of a single agreement between all the competent authorities of the States concerned or through the negotiation of separate, but consistent, bilateral mutual agreements.

This may, for instance, be the case to determine an appropriate allocation of profits between the permanent establishments that an enterprise has in two different States with which the State of the enterprise has tax conventions. In such case an adjustment made with respect to dealings between the two permanent establishments may affect the taxation of the enterprise in the State of residence. Based on provisions corresponding to paragraphs 1 and 2 of Article 25 of the tax conventions between the State of the enterprise and the States in which the permanent establishments are situated, the competent authority of the State of the enterprise clearly has the authority to endeavour to resolve the case by mutual agreement with the competent authorities of the States in which the permanent establishments are situated and to determine the appropriate attribution of profits to the permanent establishments of its resident in accordance with both tax conventions. Where the tax conventions between the State of the enterprise and the States in which the permanent establishments are situated contain different versions of Article 7 (e.g. the version included in the OECD Model in 2010 in one convention and the previous version of Article 7 in the other convention), the competent authorities may have regard to considerations of equity as mentioned above in order to find an appropriate solution with a view to ensuring taxation in accordance with the provisions of the applicable conventions.

This may, for instance, also be the case where a number of associated enterprises of different States are involved in a series of integrated controlled transactions and there are bilateral tax conventions among the States of all the enterprises. Such a series of integrated controlled transactions could exist, for example, where intellectual property is licensed in a controlled transaction between two members of a multinational enterprise group and is then used by the licensee to manufacture goods sold by the licensee to other members of the multinational enterprise group. Based on provisions corresponding to paragraphs 1 and 2 of Article 25, the competent authorities of the States of these enterprises clearly have the authority to endeavour to determine the appropriate arm's length transfer prices for the controlled transactions in accordance with the arm's length principle of provisions corresponding to Article 9.

As recognised below, in the multilateral case, provisions of the tax convention between the States in which the permanent establishments are situated corresponding to paragraph 3 of Article 25 enable those two States to consult together to ensure that the convention operates effectively and that the double taxation that can occur in such a situation is appropriately eliminated.

3.5 | Application of the Mutual Agreement Procedure on Taxpayer's Request for a Multi-Year Resolution of Recurring Issues with Respect to Filed Tax Years

Qatar permits that after an initial tax assessment, requests made by taxpayer which are within the time period provided for in the tax convention (or within a period of 3 years from the first notification of the action resulting in taxation not in accordance with the tax convention) for the multi-year resolution through the mutual agreement procedure of recurring issues with respect to filed tax years, where the relevant facts and circumstances are the same and subject to the verification of such facts and circumstances on audit.

3.6 | Application of the Mutual Agreement Procedure on Cases of Bona Fide Taxpayer-Initiated Foreign Adjustments

“Taxpayers will be allowed access to the mutual agreement procedure so that the competent authorities may resolve through consultation the double taxation that can arise in the case of bona fide taxpayer-initiated foreign adjustments.

Taxpayer-initiated foreign adjustments are 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, with a view to reporting a result that is, in the view of the taxpayer, in accordance with the arm’s length principle. For such purposes, a taxpayer-initiated foreign adjustment should be considered bona fide where it reflects the good faith effort of the taxpayer to report correctly the taxable income from a controlled transaction or the profits attributable to a permanent establishment and where the taxpayer has otherwise timely and properly fulfilled all of its obligations related to such taxable income or profits under the tax laws of the two Contracting Parties”.

3.7 | Application of the Mutual Agreement Procedure on Interest and Administrative Penalties

Where interest and administrative penalties are directly connected to taxes covered under provisions corresponding to Article 2, they should be appropriately reduced or withdrawn to the same extent as the underlying covered tax is reduced or withdrawn pursuant to the mutual agreement procedure. Consequently, a contracting State that has applied interest or an administrative penalty that is computed with reference to an underlying tax liability (or with reference to some other amount relevant to the determination of tax, such as the amount of an adjustment or an amount of taxable income) and that has subsequently agreed pursuant to a mutual agreement procedure under provisions corresponding to paragraphs 1 and 2 of Article 25 to reduce or withdraw that underlying tax liability should proportionally reduce the amount of or withdraw such interest or administrative penalty.

In contrast, other administrative penalties (for example, a penalty for failure to maintain proper transfer pricing documentation) may concern domestic law compliance issues that are not directly connected to a tax liability that is the object of a mutual agreement procedure request. Under provisions corresponding to paragraph 3 of Article 25, the General Tax Authority may consult with the competent authority of the other contracting State and agree, in a specific case, that a penalty not directly connected with taxation not in accordance with the Convention was not or is no longer justified. For instance, where an administrative penalty for negligence, willful conduct or fraud has been levied at a fixed amount and it is subsequently agreed in the mutual agreement procedure that there was no fraudulent intent, wilful conduct or negligence, the competent authorities may agree that the contracting State that applied such penalty will withdraw it. Under provisions corresponding to paragraph 3, the competent authorities may also enter into a general mutual agreement pursuant to which they will endeavour through the mutual agreement procedure to resolve under paragraphs 1 and 2 issues related to interest and administrative penalties that give rise to difficulties or doubts as to the application of the tax convention. Contracting States may, if they consider it preferable, expressly provide in paragraph 2 of Article 25 for the application of that paragraph to interest and administrative penalties in mutual agreement procedure cases presented in accordance with paragraph 1 by adding the following as a second sentence:

The competent authorities shall also endeavour to agree on the application of domestic law provisions regarding interest and administrative penalties related to the case.

Criminal penalties imposed by a public prosecutor or a court would generally not fall within the scope of the mutual agreement procedure. In many States, competent authorities would have no legal authority to reduce or withdraw those penalties.

A mutual agreement will often result in a tax liability being maintained in one Contracting State whilst the other Contracting State has to refund all or part of the tax it has levied. In such cases, the taxpayer may suffer a significant economic burden if there are asymmetries with respect to how interest accrues on tax liabilities and refunds in the two Contracting States. This will, for instance, be the case where the first Contracting State has charged

late payment interest on the tax that was the object of the mutual agreement procedure request and the second Contracting State does not grant overpayment interest on the amount it has to refund to the taxpayer. Therefore, Contracting States should seek to adopt flexible approaches to provide relief from interest accessory to the tax liability that is the object of a mutual agreement procedure request. Relief from interest would be especially appropriate for the period during which the taxpayer is in the mutual agreement process, given that the amount of time it takes to resolve a case through the mutual agreement procedure is, for the most part, outside the taxpayer's control. Changes to the domestic law of a Contracting State may be required to permit the competent authority to provide interest relief agreed upon under the mutual agreement procedure.

4 | Authorities Designated as Being Competent for the Execution of Tax Conventions

The definition of the term “competent authority” in provisions corresponding to subparagraph f) of paragraph 1 of Article 3 recognises that in some countries the execution of tax conventions does not exclusively fall within the competence of the highest tax authorities. Some matters are reserved or may be delegated to other authorities. The definition enables each contracting State to designate one or more authorities as being competent.

In the State of Qatar, the competent authority, as identified in the article of the tax conventions corresponding to Article 3 (General Definitions) is the Minister of Finance. His authorized representative is the President of the General Tax Authority to whom was delegated the authority to administer Qatar's mutual agreement program.

If a taxpayer seeks to resolve the problem which opposes him to the tax administration by the mutual agreement procedure provided for in the provisions of the tax convention corresponding to Article 25 of the Model Tax Convention of the Organization for Cooperation and for economic development, he should submit his request for mutual agreement procedure to the competent authority.

The contact details of the persons authorized to receive the request are published on the official website of the General Tax Authority (see annex 1 to this Manual).

5 | Powers of the Competent Authorities in a Mutual Agreement Procedure

Through provisions corresponding to Article 25, the contracting States have delegated to the competent authorities broad powers concerning the application and interpretation of the provisions of the convention.

5.1 | Authority to Resolve by Mutual Agreement Cases Where Taxation Would Not Be in Accordance with the Convention

Provisions corresponding to paragraph 2 of Article 25 authorises the competent authorities to resolve by mutual agreement cases presented by taxpayers in order to avoid taxation which could otherwise result from domestic laws but would not be in accordance with the convention.

5.2 | Authority to Resolve by Mutual Agreement Difficulties or Doubts Concerning the Interpretation or Application of the Convention

Provisions corresponding to paragraph 3 similarly authorises the competent authorities to resolve by mutual agreement difficulties or doubts concerning the interpretation or application of the convention, both in individual cases (e.g. with respect to a single taxpayer's case) and more generally (e.g. through the joint interpretation of a provision of the treaty applicable to a large number of taxpayers). Under paragraph 3, the competent authorities can, in particular, enter into a mutual agreement to define a term not defined in the convention, or to complete or clarify the definition of a defined term, where such an agreement would resolve difficulties or doubts arising as to the interpretation or application of the convention. Such circumstances could arise, for example, where a conflict in meaning under the domestic laws of the two States creates difficulties or leads to an unintended or absurd result. As expressly recognised in provisions corresponding to paragraph 2 of Article 3, an agreement reached concerning the meaning of a term used in the convention prevails over each State's domestic law meaning of that term.

6 | Operation of the Mutual Agreement Procedure

As regards the option of the mutual agreement procedure, it is necessary to consider the following:

6.1 | Initiation of the Mutual Agreement Procedure

The mutual agreement procedure, unlike the disputed claims procedure under domestic law, can be set in motion by a taxpayer without waiting until the taxation considered by him to be “not in accordance with the Convention” has been charged against or notified to him. To be able to set the procedure in motion, he must, and it is sufficient if he does, establish that the “actions of one or both of the Contracting States” will result in such taxation, and that this taxation appears as a risk which is not merely possible but probable. Such actions mean all acts or decisions, whether of a legislative or a regulatory nature, and whether of general or individual application, having as their direct and necessary consequence the charging of tax against the complainant contrary to the provisions of the convention. As indicated by the opening words of provisions corresponding to paragraph 1 of Article 25, whether or not the actions of one or both of the contracting States will result in taxation not in accordance with the convention must be determined from the perspective of the taxpayer. The taxpayer’s belief that there will be such taxation must be reasonable and must be based on facts that can be established.

6.2 | Conditions of Acceptability of a Request

To be admissible objections presented under provisions corresponding to paragraph 1 of Article 25 must first meet a twofold requirement expressly formulated in those provisions:

- They must be presented to the competent authority as specified by the convention, and
- They must be so presented within the time limit as specified in the convention.

If the tax treaty does not provide a deadline for the presentation of the request, it should be submitted within 3 years from the notification of the measure giving rise to taxation not in accordance with the tax treaty.

The tax convention does not lay down any special rule as to the form of the objections. However, the GTA prescribes special procedures for the presentation of such objections.

6.2.1 | The Objection Must Be Presented to the CA

6.2.1.1 | Conventions Providing to the Taxpayer the Option to Present His Case to the Competent Authority of Either Contracting State

Provisions corresponding to paragraph 1 of Article 25 permit a person to present his case to the competent authority of either contracting State. Those provisions do not preclude a person from presenting his case to the competent authorities of both contracting States at the same time. Where a person presents his case to the competent authorities of both contracting States, he should appropriately inform both competent authorities in order to facilitate a coordinated approach to the case.

6.2.1.2 | Conventions Requiring the Taxpayer to Present His Case to the Competent Authority of the State of Which He Is Resident or Which He Is a National

Provisions corresponding to the alternative rule to paragraph 1 of Article 25 do not give the taxpayer the option of presenting his cases to the competent authority of either State, but require, in the first instance, that they present their cases to the competent authority of the State of which they are resident. However, where a person who is a national of one State but a resident of the other complains of having been subjected in that other State to taxation (or any requirement connected therewith) which is discriminatory under provisions corresponding to paragraph 1 of Article 24, this provision allows him, by way of exception to the alternative rule which obliges the taxpayer to present his case to the competent authority of his State of residence, to present his objection to the competent authority of the contracting State of which he is a national. Similarly, it appears more appropriate that it would be to the same

competent authority that an objection should be presented by a person who, while not being a resident of a contracting State, is a national of a contracting State, and whose case comes under provisions corresponding to paragraph 1 of Article 24.

If the taxpayer becomes a resident of a State subsequently to the taxation he considers not in accordance with the convention, he must, under provisions corresponding to the alternative rule above, nevertheless still present his objection to the competent authority of the other State of which he was a resident during the period in respect of which such taxation has been or will be charged.

If the General Tax Authority receives a request for mutual agreement procedure from a taxpayer, in accordance with a provision corresponding to the alternative rule to paragraph 1 of Article 25, and the objection of the taxpayer does not seem justified, the General Tax Authority will consult with the other competent authority, before responding to the taxpayer.

6.2.2 | The Objection Must Be Presented Within the Period of the First Notification of the Action Which Gives Rise to Taxation Which Is Not in Accordance with the Tax Convention

The time limit of set by provisions corresponding to the second sentence of paragraph 1 of Article 25 for presenting objections is intended to protect administrations against late objections.

6.2.2.1 | Starting Point of the Time Limit

General considerations - The starting point of the time limit is the date of the “first notification of the action resulting in taxation not in accordance with the provisions of the convention”. Even if such taxation should be directly charged in pursuance of an administrative decision or action of general application, the time limit begins to run only from the date of the notification of the individual action giving rise to such taxation, that is to say from the act of taxation itself, as evidenced by a notice of assessment or an official demand or other instrument for the collection or levy of tax. Since a taxpayer has the right to present a case as soon as the taxpayer considers that taxation will result in

taxation not in accordance with the provisions of the convention, whilst the time limit only begins when that result has materialised, there will be cases where the taxpayer will have the right to initiate the mutual agreement procedure before the time limit begins.

In most cases it will be clear what constitutes the relevant notice of assessment, official demand or other instrument for the collection or levy of tax, and the Qatari law rules govern when that notice is regarded as “given”. Those rules deal with the actual and presumptive physical receipt.

Starting point of the period in self assessment cases – In self assessment cases, there will usually be some notification effecting that assessment (such as a notice of a liability or of denial or adjustment of a claim for refund), and generally the time of notification, rather than the time when the taxpayer lodges the self-assessed return, would be a starting point for the time limit to run. There may, however, be cases where there is no notice of a liability or the like. In such cases, the relevant time of “notification” would be the time when the taxpayer would, in the normal course of events, be regarded as having been made aware of the taxation that is in fact not in accordance with the Convention. The time begins to run whether or not the taxpayer actually regards the taxation, at that stage, as contrary to the Convention, provided that a reasonably prudent person in the taxpayer’s position would have been able to conclude at that stage that the taxation was not in accordance with the Convention. In such cases, notification of the fact of taxation to the taxpayer is enough. Where, however, it is only the combination of the self assessment with some other circumstance that would cause a reasonably prudent person in the taxpayer’s position to conclude that the taxation was contrary to the Convention (such as a judicial decision determining the imposition of tax in a case similar to the taxpayer’s to be contrary to the provisions of the Convention), the time begins to run only when the latter circumstance materialises.

Starting point of the period in cases where the tax is levied by deduction at the source – If the tax is levied by deduction at the source, the time limit begins to run from the moment when the income is paid.

6.2.2.2 | Simultaneous Initiation of Mutual Agreement Procedure and Domestic Law Action (“Protective” Appeals under Domestic Law)

The time limit continues to run during any domestic law (including administrative) proceedings (e.g. a domestic appeal process). Some taxpayers may rely solely on the mutual agreement procedure. Other taxpayers may initiate a mutual agreement procedure whilst simultaneously initiating domestic law action, even though the domestic law process is initially not actively pursued. This could result in mutual agreement procedure resources being inefficiently applied. In this case, the General Tax Authority would enter into talks with the other competent authority, but without finally settling an agreement, unless and until the taxpayer agrees to withdraw the actions under domestic law.

6.3 | Limitations on Access to the Mutual Agreement Procedure

A taxpayer initiated mutual agreement procedure will not be denied on the following basis:

- That there has not been the necessary payment of all or part of the tax in dispute, i.e. payment of outstanding tax is not be a requirement to initiate the mutual agreement procedure;
- That the issue presented by the taxpayer for mutual agreement procedure has already been resolved through an audit settlement between the taxpayer and the tax administration (the State of Qatar will not deny access to mutual agreement in cases where there is an audit settlement between the tax administration and the taxpayer);
- That the taxpayer had not provided the information or documentation required by the General Tax Authority. In this case, access to the mutual agreement procedure should only be refused because the taxpayer refused or was unable to provide the required information or documentation within 60 days of the request notified to it by the General Tax Authority;
- That a court decision is rendered. However, the General Tax Authority is not

allowed to deviate from a final court decision in a mutual agreement. The General Tax Authority will be the other competent authority agreement of that decision, to decide to either agree on the mutual agreement case according to the decision or agree not to agree.

7 | Stages of the Mutual Agreement Procedure

As regards the mutual agreement procedure in general, the General Tax Authority is committed to the following:

- To keep the formalities involved in instituting and operating the mutual agreement procedure to a minimum and to eliminate any unnecessary formalities eliminated; and
- To settle each mutual agreement cases be settled on their individual merits and not by reference to any balance of the results in other cases; and
- Where appropriate, to formulate and publicise domestic rules, guidelines and procedures concerning use of the mutual agreement procedure.

The General Tax Authority will seek to resolve mutual agreement procedure cases within an average time frame of 24 months, whether the State of Qatar receives the mutual agreement procedure request from the taxpayer or is notified of a mutual agreement procedure request from its treaty partner.

As regards the procedure itself, it is necessary to consider briefly the two distinct stages into which it is divided.

7.1 | First (Unilateral) Stage of the Mutual Agreement Procedure

As regards the first stage of the mutual agreement procedure, it is necessary to consider the following:

7.1.1 | Presentation of the Taxpayer's Objections

In the first stage, which opens with the presentation of the taxpayer's objections, the procedure takes place exclusively at the level of dealings between the taxpayer and the competent authorities of the State to which the case was presented. The provisions corresponding to paragraph 1 of Article 25 give the taxpayer concerned the right to apply

to the competent authority of either State (except where the objection is presented in accordance with provisions corresponding to the alternative provision to paragraph 1 of Article 25), whether or not all the remedies available under the domestic law of each of the two States have been exhausted. On the other hand, the competent authority is under an obligation to consider whether the objection is justified and, if it appears to be justified, take action on it in one of the two forms provided for provisions corresponding to paragraph 2.

7.1.1.1 | Manner and Form in Which the Taxpayer's Objection Should Be Submitted

The objection could be submitted in paper or electronically, in Arabic or in English. If the taxpayer is intending to submit the same objection to another competent authority, then the two requests should be submitted at the same time.

7.1.1.2 | Information and Documentation Required to Be Submitted with the Taxpayer's Objection

The information and documentation to be included in the taxpayer's mutual agreement procedure request could include, for example, the following:

- Identity of the taxpayer(s) covered in the mutual agreement procedure request – the identity of the taxpayer(s) covered in a mutual agreement procedure request must be sufficiently specific to allow the competent authority to identify and contact the taxpayer(s) involved. The information provided should include the name, address, taxpayer identification number or birth date, contact details and the relationship between the taxpayers covered in the mutual agreement procedure request (where applicable).
- The basis for the request – the mutual agreement procedure request should state the specific tax treaty including the provision(s) of the specific article(s) which the taxpayer considers is not being correctly applied by either one or both contracting party (and to indicate which party and the contact details of the relevant person(s) in that party).

- Facts of the case – the mutual agreement procedure request should contain all the relevant facts of the case including any documentation to support these facts, the taxation years or period involved and the amounts involved (in both the local currency and foreign currency).
- Analysis of the issue(s) requested to be resolved via mutual agreement procedure – the taxpayer should provide an analysis of the issue(s) involved, including its interpretation of the application of the specific treaty provision(s), to support its basis for making a claim that the provision of the specific tax treaty is not correctly applied by either one or both contracting party. The taxpayer should support its analysis with relevant documentation (for example, documentation required under transfer pricing legislative or published guidance, copies of tax assessments, audits conducted by the tax authorities leading to the incorrect application of the tax treaty provision).
- Whether the mutual agreement procedure request was also submitted to the competent authority of the other Contracting Party – If so, the mutual agreement procedure request should make this clear, together with the date of such submission, the name and the designation of the person or the office to which the mutual agreement procedure request was submitted. A copy of that submission (including all documentations filed with that submission) should also be provided unless the content of both mutual agreement procedure submissions are exactly the same.
- Whether the mutual agreement procedure request was also submitted to another authority under another Instrument that provides for a mechanism to resolve treaty-related disputes – If yes, the mutual agreement procedure request should clearly state so and the date of such submission, the name and the designation of the person or the office to which the mutual agreement procedure request was submitted, should be provided. A copy of that submission (including all documentations filed with that submission) should also be provided unless the content of both mutual agreement procedure submissions are exactly the same.
- Whether the issue(s) involved were previously dealt with – the request should state whether the issue(s) presented in the mutual agreement procedure request has been previously dealt with, for example, in an advance ruling, advance pricing arrangement, settlement agreement or by any tax tribunal or court. If yes, a copy of these rulings, agreements or decisions should be provided.

- A statement confirming that all information and documentation provided in the mutual agreement procedure request is accurate and that the taxpayer will assist the competent authority in its resolution of the issue(s) presented in the mutual agreement procedure request by furnishing any other information or documentation required by the competent authority in a timely manner – responses to the request should be complete and be submitted within the time stipulated in the request for such information or documentation.

The State of Qatar will not limit access to mutual agreement procedure based on the argument that insufficient information was provided. Access to the mutual agreement procedure will only be refused because the taxpayer refused or was unable to provide the required information or documentation within 60 days of the request notified to it by the General Tax Authority.

7.1.2 | Preliminary Assessment of the Taxpayer's Objection

The determination whether the objection “appears ... to be justified” requires the competent authority to which the case was presented to make a preliminary assessment of the taxpayer's objection in order to determine whether the taxation in both Contracting States is consistent with the terms of the Convention. It is appropriate to consider that the objection is justified where there is, or it is reasonable to believe that there will be, in either of the Contracting States, taxation not in accordance with the Convention.

7.1.2.1 | Case Where the Taxation Complained of Is Due Wholly or in Part to a Measure Taken in the State of Qatar

If the General Tax Authority duly approached recognises that the complaint is justified and considers that the taxation complained of is due wholly or in part to a measure taken in the State of Qatar, it will give the complainant satisfaction as speedily as possible by making such adjustments or allowing such reliefs as appear to be justified. In this situation, the issue can be resolved without moving beyond the first (unilateral) stage of the mutual agreement procedure. On the other hand, the General Tax Authority will exchange views and information with the competent authority of the other Contracting State, in order, for example, to confirm a given interpretation of the Convention.

Where the treaty does not permit a mutual agreement procedure request to be made to either Contracting Party and the General Tax Authority who received the mutual agreement request from the taxpayer does not consider the taxpayer's objection to be justified, the General Tax Authority will implement a bilateral consultation process which allows the other competent authority to provide its views on the case. Such consultation shall not be interpreted as consultation as to how to resolve the case.

7.1.2.2 | Case Where the Taxation Complained of Is Due Wholly or in Part to a Measure Taken in the Other State

If, however, it appears to the General Tax Authority of the State of Qatar that the taxation complained of is due wholly or in part to a measure taken in the other State, it will be incumbent on it, as clearly appears by the terms of provisions corresponding to paragraph 2 of Article 25, to set in motion the second (bilateral) stage of the mutual agreement procedure, as quickly as possible, especially in cases where the profits of associated enterprises have been adjusted as a result of transfer pricing adjustments.

A taxpayer is entitled to present his case under paragraph 1 to the competent authority of the State of which he is a resident whether or not he may also have made a claim or commenced litigation under the domestic law of that State. If litigation is pending, the competent authority of the State of residence should not wait for the final adjudication, but should say whether it considers the case to be eligible for the mutual agreement procedure. If it so decides, it has to determine whether it is itself able to arrive at a satisfactory solution or whether the case has to be submitted to the competent authority of the other Contracting State. An application by a taxpayer to set in motion the mutual agreement procedure may be made to the competent authority of either Contracting State.

7.2 | Impact of a Claim Made or a Litigation Commenced Under the Domestic Law on the Mutual Agreement Procedure

A taxpayer is entitled to present his case under provisions corresponding to paragraph 1 of Article 25 to the competent authority of either State (except where the objection is presented in accordance with provisions corresponding to the alternative provision to paragraph 1 of Article 25) whether or not he may also have made a claim or commenced litigation under the domestic law of one (or both) States.

7.2.1 | Case Where a Litigation Is Pending

If litigation is pending in the State of Qatar to which the claim is presented, the General Tax Authority will not wait for the final adjudication, but will say whether it considers the case to be eligible for the mutual agreement procedure. If it so decides, it has to determine whether it is itself able to arrive at a satisfactory solution or whether the case has to be submitted to the competent authority of the other Contracting State. An application by a taxpayer to set the mutual agreement procedure in motion should not be rejected without good reason.

7.2.2 | Case Where a Claim Has Been Finally Adjudicated by a Court

If a claim has been finally adjudicated by a court in either State (or in the State of which the taxpayer is a resident or of which he is a national), a taxpayer may wish even so to present or pursue a claim under the mutual agreement procedure. In State of Qatar, the General Tax Authority is bound by the court decision (i.e. it is obliged as a matter of law, to follow the court decision). It may nevertheless present the case to the competent authority of the other Contracting State and ask the latter to take measures for avoiding double taxation.

7.3 | Second Stage (Bilateral) of the Mutual Agreement Procedure

In its second stage – which opens with the approach to the competent authority of the other State by the competent authority to which the taxpayer has applied – the procedure is henceforward at the level of dealings between States, as if, so to speak, the State to which the complaint was presented had given it its backing.

7.3.1 | Duty to Negotiate, Duty to Use Best Endeavours

Provisions corresponding to paragraph 2 of Article 25 no doubt entails a duty to negotiate; but as far as reaching mutual agreement through the procedure is concerned, the competent authorities are under a duty merely to use their best endeavours and not to achieve a result.

7.3.2 | Determination by the Competent Authorities of Their Position

In seeking a mutual agreement, the competent authorities must first, of course, determine their position in the light of the rules of their respective taxation laws and of the provisions of the Convention, which are as binding on them as much as they are on the taxpayer. Should the strict application of such rules or provisions preclude any agreement, it may reasonably be held that the competent authorities, as in the case of international arbitration, can, subsidiarily, have regard to considerations of equity in order to give the taxpayer satisfaction.

Some of the tax treaties concluded by the State of Qatar provide that in a cases where the competent authorities are unable to reach an agreement under provisions corresponding to paragraph 2 of the Article 25 within a certain period of time, the unresolved issues will, at the request of the person who presented the case, be solved through an arbitration process (tax treaties with the Netherlands, Nigeria and the United Kingdom).

The position of the State of Qatar on arbitration in the mutual agreement procedure will be published in a separate document, after consultation with stakeholders.

7.3.3 | Cases of Corresponding Adjustments of Profits Following Transfer Pricing Adjustments

As regards corresponding adjustments of profits following transfer pricing adjustments (implementation of provisions corresponding to paragraphs 1 and 2 of Article 9), the General Tax Authority is committed to the following:

- The General Tax authority will notify taxpayers as soon as possible of its intention to make a transfer pricing adjustment, since it is particularly useful to ensure as early and as full contacts as possible on all relevant matters between tax authorities and taxpayers within the same jurisdiction and, across national frontiers, between the associated enterprises and tax authorities concerned.
- The General Tax Authority will communicate with each other in these matters in as flexible a manner as possible, whether in writing, by telephone, or by face-to-face or round-the-table discussion, whichever is most suitable, and will seek to develop the most effective ways of solving relevant problems. Provisions corresponding

to Article 26 on the exchange of information will be used in order to assist the competent authority in having well-developed factual information on which a decision can be made.

- The General Tax Authority will give the taxpayers, in the course of mutual agreement proceedings on transfer pricing matters, every reasonable opportunity to present the relevant facts and arguments to it both in writing and orally.

7.3.4 | Suspension of Assessment and Collection Procedures During the Period That the Mutual Agreement Proceeding Is Pending

Conventions newly concluded by the State of Qatar could include the following text:

“The suspension of assessment and collection procedures during the period that any mutual agreement proceeding is pending shall be available under the same conditions as apply to a person pursuing a domestic administrative or judicial remedy.”

or the following text:

“Assessment and collection procedures shall be suspended during the period that any mutual agreement proceeding is pending.”

In the absence of such provisions, Qatar could take appropriate measures to provide for the suspension of recovery procedures during the period during which a mutual agreement procedure case is pending, under the same conditions as those applicable to a person exercising an internal administrative or judicial remedy.

8 | Implementation of an Agreement Reached as Part of the Mutual Agreement Procedure

The obligation of implementing agreements reached as part of the mutual agreement procedure is unequivocally stated in provisions corresponding to the last sentence of paragraph 2 of Article 25.

The State of Qatar will implement any agreement reached in mutual agreement procedure discussions, including by making appropriate adjustments to the tax assessed in transfer pricing cases.

Agreements reached by competent authorities through the MAP process will be implemented on a timely basis, notwithstanding any time limits in its domestic law, even where the tax treaties do not contain a provision corresponding to the second sentence of paragraph 2 of Article 25 of the Model Tax Convention of the Organisation for Economic Development and Cooperation.

8.1 | General Considerations

When the competent authority of the State of Qatar settles a mutual agreement procedure with the other competent authority, this resolution must be confirmed by an exchange of letters shortly after the conclusion of the discussions, in order to ensure that the agreed terms are accurately reflected therein. The General Tax Authority will agree with the other competent authority on a provisional timetable for the implementation of the mutual agreement.

The General Tax Authority will communicate the terms of the resolution to the taxpayer concerned as soon as possible. This communication could take place before the exchange of letters, if the General Tax Authority mutually agree with the other competent authority.

If the terms and conditions of the resolution are not satisfactory to the taxpayer, the latter has the right to withdraw from the mutual agreement process, and to pursue other internal redress mechanisms, if available.

If the terms and conditions of the mutual agreement are satisfactory for the taxpayer, the latter must accept in writing the results of the mutual agreement procedure, withdraw his internal objections (if they are filed) or refrain from seeking any other recourse on the same question and the same years.

The competent authorities will not implement the resolution until after the exchange of letters.

Once the letters have been exchanged and, if necessary, the resolution is accepted by the taxpayer, a competent authority must take steps to ensure that it takes effect in its jurisdiction.

The General Tax Authority will make every effort to ensure that as far as possible the mutual agreement procedure is not in any case frustrated by operational delays or, where time limits would be in point, by the combined effects of time limits and operational delays.

8.2 | Impact of Time Limit Relating to Adjustments of Assessments and of Tax Refunds in Domestic Law on an Agreement Reached as Part of a Mutual Agreement Procedure

The purpose of the last sentence of paragraph 2 is to enable countries with time limits relating to adjustments of assessments and tax refunds in their domestic law to give effect to an agreement despite such time limits.

8.3 | Practical Implementation of an Agreement Reached as Part of a Mutual Agreement Procedure

The General Tax Authority will make every effort to ensure that as far as possible the mutual agreement procedure is not in any case frustrated by operational delays or, where time limits would be in point, by the combined effects of time limits and operational delays.

8.4 | Case Where a Mutual Agreement Is Concluded in Relation to a Taxpayer Who Has Brought a Suit for the Same Purpose in the Competent Court of Either Contracting State and Such Suit Is Still Pending

The case may arise where a mutual agreement is concluded in relation to a taxpayer who has brought a suit for the same purpose in the competent court of either Contracting State and such suit is still pending. In such a case, there would be no grounds for rejecting a request by a taxpayer that he be allowed to defer acceptance of the solution agreed upon as a result of the mutual agreement procedure until the court had delivered its judgment in that suit. Also, a view that competent authorities might reasonably take is that where the taxpayer's suit is ongoing as to the particular issue upon which mutual agreement is sought by that same taxpayer, discussions of any depth at the competent authority level should await a court decision. If the taxpayer's request for a mutual agreement procedure applied to different tax years than the court action, but to essentially the same factual and legal issues, so that the

court outcome would in practice be expected to affect the treatment of the taxpayer in years not specifically the subject of litigation, the position might be the same, in practice, as for the cases just mentioned.

As noted above, there may be a pending suit by the taxpayer on an issue, or else the taxpayer may have preserved the right to take such domestic law action, yet the competent authorities might still consider that an agreement can be reached. In such cases, it is, however, necessary to take into account the concern of a particular competent authority to avoid any divergences or contradictions between the decision of the court and the mutual agreement that is being sought, with the difficulties or risks of abuse that these could entail. In short, therefore, the implementation of such a mutual agreement should normally be made subject:

- To the acceptance of such mutual agreement by the taxpayer, and
- To the taxpayer's withdrawal of the suit at law concerning those points settled in the mutual agreement.

8.5 | Case Where There Is a Suit Ongoing on an Issue, but the Suit Has Been Taken by Another Taxpayer Than the One Who Is Seeking to Initiate the Mutual Agreement Procedure

The situation is also different if there is a suit ongoing on an issue, but the suit has been taken by another taxpayer than the one who is seeking to initiate the mutual agreement procedure. In principle, if the case of the taxpayer seeking the mutual agreement procedure supports action by one or both competent authorities to prevent taxation not in accordance with the Convention, that should not be unduly delayed pending a general clarification of the law at the instance of another taxpayer, although the taxpayer seeking mutual agreement might agree to this if the clarification is likely to favour that taxpayer's case.

Depending upon domestic procedures, the choice of redress is normally that of the taxpayer and in most cases it is the domestic recourse provisions such as appeals or court proceedings that are held in abeyance in favour of the less formal and bilateral nature of mutual agreement procedure.

8.6 | Impact of Audit Settlements on Mutual Agreement Procedure

Audit settlements may be used as a mechanism to promote the closing of audit files. As the word “settlement” implies, there are usually concessions made by both the taxpayer and the tax administration involved, which may create difficult issues where an audit involves questions related to the interpretation or application of a tax treaty which could potentially be resolved through the mutual agreement procedure. A taxpayer should not be required, as part of an audit settlement, to give up the right provided by provisions corresponding to paragraph 1 of Article 25 to present its case to a competent authority since this may impede the proper application of a tax treaty.

◆ Annex 1. – Contact Details of the Persons Authorized to Receive Requests for Mutual Agreement Procedure

1. Mr. Yousef Abdullah Al-Dosari, Director of Tax Treaties and International Corporation Department, General Tax Authority, Al'Taawon Tower, Al'Taawon Street, PO Box 2866, Doha, Qatar, tel: +974 44401510, email: y.albuhadoud@gta.gov.qa.
2. Mr. Abdulla Ahmed Al-Sulaiti, Assistant Director of Tax Treaties and International Corporation Department, General Tax Authority, Al'Taawon Tower, Al'Taawon Street, PO Box 2866, Doha, Qatar, tel: +974 44401511, email: aaalsulaiti@gta.gov.qa.
3. Mrs. Aisha Abdulla Al-Humaidi, Head of Tax Treaties Section, General Tax Authority, Al'Taawon Tower, Al'Taawon Street, PO Box 2866, Doha, Qatar.
tel: + 974 4446 1514, email: Aalhumaidi@gta.gov.qa

◆ Annex 2. – Timeline for a Typical Map Process

Step 1: Receipt of Request for Mutual Agreement Procedure

1. In case a taxpayer submits a request for the mutual agreement procedure to the General Tax Authority, the request should be submitted within the time limit provided for in the tax treaty. In case the tax convention does not provide for a deadline for the presentation of the request, it should be submitted within **3 years** from the first notification of the action resulting in taxation not in accordance with the tax convention.
2. The General Tax Authority should therefore:
 - Confirm to the taxpayer of the receipt of the request within **one week** of the date of receipt of the request;
 - Inform the other tax authority concerned of such a request within **one week** from the date of receipt of the request, notwithstanding any assessment to be made by the General Tax Authority of the eligibility of the request.
3. In case the General Tax Authority receives from another tax authority a notification of a request for mutual agreement procedure from a taxpayer, it should confirm to the other tax authority the receipt of such notification within **one week** from the date of receipt of the notification.
4. In case the General Tax Authority receives a request for mutual agreement procedure which does not include all the information and documents to be provided in accordance with this Manual, it should ask the taxpayer to present the additional information and / or documents within **2 months** from the date of receipt of the request.

The General Tax Authority should therefore decide, during the above-mentioned period, whether the request for additional information and / or documents is necessary.

In this case, the General Tax Authority should immediately inform the other competent authority of its request to the taxpayer within **one week** from the date of the request for additional information and / or documents.

The taxpayer should submit the additional information and documents within **2 months** from the date of receipt of the request from the General Tax Authority.

In this case, the General Tax Authority should inform the other competent authority of the presentation by the taxpayer of the additional information and / or documents requested within **one week** from the date of receipt of such information and / or documents.

Step 2: Assessment of the Eligibility of the Request for Mutual Agreement Procedure

Option 1:

If the General Tax Authority which had received the request for mutual agreement procedure would decide to deny to the taxpayer the access to the mutual agreement procedure, or to close the case of the mutual agreement procedure, because the taxpayer's request was considered non justified, or if the General Tax Authority would decide to grant the taxpayer a unilateral relief, it should inform the taxpayer of the result of its request for mutual agreement in writing within **4 months** from the date of receipt of the request or the additional information / documents.

In the particular case where the General Tax Authority considers the taxpayer's request not justified, it would inform or consult the other competent authority, if the relevant tax convention does not allow the taxpayer to submit its request for mutual agreement procedure to the other competent authority within **4 months** from the date of receipt of the request.

Once the case is closed, the General Tax Authority should inform the other competent authority of the outcome of the case.

Option 2:

If the General Tax Authority which had received the request for a mutual agreement procedure decides to open discussions with the other competent authority, it will inform it of its decision within **6 months** from the date of receipt of the request for mutual agreement procedure from the taxpayer.

Either of the competent authorities could send a position paper to start discussions.

The General Tax Authority should respond to any position paper received within **6 months** from the date of receipt of the position paper.

When the competent authorities decide to close the case in any form whatsoever, the General Tax Authority which had received the request for mutual agreement procedure should inform the taxpayer of the result of its request in writing, within **2 weeks** from the decision taken.

The General Tax Authority should also prepare the closing notes to be included in the closing letter.

If the request for mutual agreement procedure is withdrawn by the taxpayer, the General Tax Authority which has been notified by the taxpayer of the withdrawal of its request for mutual agreement procedure should inform the taxpayer of the result of its request for par written within **one week** of notification.

Once the file is closed, the General Tax Authority which closed the case should inform the other competent authority of the outcome of the case, within **one week** of notification. If the request for mutual agreement procedure is withdrawn by the taxpayer, the General Tax Authority which has been notified by the taxpayer of the withdrawal of its request for mutual agreement procedure should inform the taxpayer of the result of its request for par written within **one week** of notification.

Once the file is closed, the General Tax Authority which closed the case should inform the other competent authority of the outcome of the case, within **one week** of notification.

Step 3: Mutual Agreement between the Competent Authorities

Once the draft mutual agreement has been concluded, the taxpayer and any other interested party are notified of such an agreement within **2 weeks** of the date of conclusion of the agreement.

The taxpayer should express his acceptance or refusal of the mutual agreement concluded within **30 days** from the date of notification of the agreement.

Any mutual agreement should be implemented as soon as possible, and no later than **4 months** after exchange of closing letters.

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