

Tax Hotline

February 24, 2003

CENTRAL BOARD OF DIRECT TAXES NOTIFIES PROCEDURE FOR MAP CASES

The Mutual Agreement Procedure ("MAP") as envisaged under the Double Tax Avoidance Agreements ("DTAA") entered into by India with other countries was to some extent handicapped by the absence of well-defined procedure under the Income Tax Act, 1961 ("ITA"). Notification 31 of 2003, dated February 6, 2003, issued by the Central Board of Direct Taxes is aimed at addressing this lacuna by laying down the procedure to be adopted by a resident taxpayer when making an application under MAP to the Indian Competent Authority ("ICA") as well as the procedure that the ICA is required to follow when it receives a reference from the Competent Authority of a country with which India has entered into a DTAA.

The Notification enjoins upon the ICA to resolve the case in accordance with the DTAA which has been conferred with the power to call for and examine the relevant records. The resolution arrived at would have to be communicated to the respective Chief Commissioner or the Director-General of Income-tax, as the case may be. The Assessing Officer would have to give effect to the resolution within ninety days of receiving the communication, if the assessee:

- accepts the resolution taken under mutual agreement procedure; and
- withdraws his appeal, if any, pending on the issue which was the subject matter for adjudication under MAP.

The amount of tax, interest or penalty already determined would be adjusted after incorporating the decision taken under MAP in the manner provided under the ITA or the Rules made thereunder, to the extent they are not contrary to the resolution arrived at.

It is pertinent to note that on September 25, 2002, the Competent Authorities of India and US entered into an agreement to facilitate efficient processing of MAP cases. Considering the difficulty faced by taxpayers pending settlement under MAP, this agreement provides for deferring assessment or suspending collection of tax, interest or penalties, for any taxable years, which are the subject of MAP proceedings.

Source: Notification 31 of 2003, dated February 6, 2003

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