

MUTUAL AGREEMENT PROCEDURES (MAP) GUIDELINES



St. Kitts and Nevis



ACRONYMS AND ABBREVIATIONS

APAs	Advance Pricing Agreements
CA	Competent Authority
CARICOM	Caribbean Community
DTA	Double Taxation Agreement
ITLD	International Tax and Legal Compliance Division
MAP	Mutual Agreement Procedure
OECD	Organization for Economic Corporation and Development
SKNCA	St. Kitts and Nevis Competent Authority

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1. Introduction

The purpose of this document is to set out the process through which taxpayers can request assistance from the St. Kitts and Nevis Competent Authority (“SKNCA”) to resolve disputes arising from taxation not in accordance with the provisions of the relevant Double Taxation Agreement (“DTA”) to which St. Kitts and Nevis is party. In St. Kitts and Nevis, the Financial Secretary, in the Ministry of Finance, St. Kitts and Nevis is the Competent Authority. Taxpayers may request Mutual Agreement Procedure (MAP) assistance under the terms of the relevant DTAs.

This document does not include guidance on the applications for Advance Pricing Agreements (APAs). St. Kitts and Nevis does not offer a bilateral APA program. The jurisdiction, however, offers a voluntary ruling system for taxpayers requiring certainty with respect to their tax transactions based on stated facts and circumstances.

Please see ‘[Format for Making a MAP request](#)’ (pg. 7) for further details on MAP assistance.

This document is subject to periodic revisions.

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2. What Is A Tax Convention?

A tax convention, tax agreement or tax treaty is an official agreement between two or more countries on the administration of taxation when the domestic tax laws of the contracting countries apply simultaneously to a particular issue or taxpayer. Tax conventions provide a means of settling, on a uniformed basis, the most common problems that arise in international double taxation.

In total, St. Kitts and Nevis has twenty-one (21) DTAs with eleven (11) bilateral agreements and one (1) CARICOM multilateral agreement concluded with ten (10) of its treaty partners. Copies of these DTAs can be found on the websites www.sknird.com and mof.gov.kn.

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3. Legal Basis For A Mutual Agreement Procedure (MAP) Request

Tax treaties provide a mechanism where contracting states can resolve disputes arising under the treaty. This dispute resolution mechanism is governed by MAP. MAPs that are consistent with Article 25 of the OECD Model Tax Convention on Income and Capital (Model Convention) can be found in some of the DTAs in force in St. Kitts and Nevis.

St. Kitts and Nevis has concluded twenty (21) DTAs of which thirteen (13) have MAP provisions. St. Kitts and Nevis has initiated a process for the review of all its DTAs with a view for updating or concluding new agreements with relevant treaty partners. This process will ensure that all the St. Kitts and Nevis Double Taxation Treaties are in compliance with international standards.

St. Kitts and Nevis will facilitate MAP requests from taxpayers in treaty partner states where the DTAs contain MAP provisions or other similar provisions. Please refer to [MAP Provision In Tax Treaties](#).

St. Kitts and Nevis will also grant access to MAP in cases of perceived treaty and domestic abuse.

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4. MAP And The Domestic Law

As per the relevant DTA provisions, the taxpayer is granted access to the MAP irrespective of domestic remedies previously available. Where domestic legal remedies are still available, the SKNCA would either require that the taxpayer agree to the suspension of these remedies or, if the taxpayer disagrees, the SKNCA would delay the MAP until these remedies are exhausted. In this regard, the taxpayer can choose to resolve its case via MAP, domestic procedures or both.

Settlement of MAP cases could be impacted by the decision of a competent court operating in the jurisdiction of St. Kitts and Nevis.

The SKNCA would be legally bound by the decision of a court of competent jurisdiction and would be limited in its ability to settle the MAP in a way that is inconsistent with that court decision. In some cases, the SKNCA may also be prevented from providing relief through MAP based on the decision of that court. The SKNCA, however, may still be able to enter into bilateral discussions with the other Contracting States to determine whether relief could be granted in any alternative means. Any relief for double taxation or taxation not in accordance with the Tax Convention may be possible only in the other Contracting State at the discretion of its Competent Authority.

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5. Who Can Request A MAP?

Any person who is a tax resident of St. Kitts and Nevis who considers that the actions of one or both of the Contracting States result or will result in taxation not in accordance with the provisions of the relevant DTA, may, irrespective of the remedies provided by the domestic law of those states, present a case to the SKNCA.

Nationals of St. Kitts and Nevis who are not tax resident in St. Kitts and Nevis may submit a MAP request to the SKNCA only if the case relates to discriminatory tax practices.

In cases where an adjustment is made that affects associated enterprises resident in different jurisdictions, it is advisable that each of those enterprises submit a request for initiating a MAP to the Competent Authority of the state of which it is a resident.

A taxpayer-initiated foreign adjustment is considered bona fide where it reflects the good faith effort of the taxpayer to report correctly, timely and properly the adjusted taxable income from a controlled transaction or the profits attributable to a permanent establishment with a view to reflect an arm's length result, and where the taxpayer has otherwise timely and properly fulfilled all of its obligations related to such taxable income or profits under the laws of the Income Tax Act.

The SKNCA will accept MAP requests regarding bona fide taxpayer-initiated foreign adjustments and process them based on the merits of each case.

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6. How Does MAP Work?

The MAP process is initiated when a *person*, defined by the respective DTA, considers that the actions of one or both of the Contracting States result or will result in taxation not in accordance with the provisions of the relevant DTA. The MAP process can be initiated by a taxpayer prior to any taxation charged against or notified to him. In such cases, the taxpayer must establish that the anticipated tax charge will create a position that would be contrary to the provisions of the relevant Convention. The actions must be probable, based on facts and may result in double taxation, or taxation that contradicts the rule(s) of the relevant DTA.

For a MAP case to be accepted by the SKNCA:

1. The taxpayer must present the case to the correct CA; and
2. The MAP request must be presented within the required time frame.

6.1 Format For Making A MAP Request

In order to request MAP assistance, a taxpayer must submit the completed MAP Application to the SKNCA. Please refer to the [Map Application](#) form attached. A copy can also be found on websites www.mof.gov.kn and www.sknird.com. The correspondence must be in English and should be addressed to:

Mrs. Hilary Hazel
Competent Authority
Ministry of Finance
Basseterre
St. Kitts
Email: skncompetentauthority@gmail.com and/or finsec@gov.kn
Telephone: 1-(869)-467-1092

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6.2 Time Limit For Making A MAP Request

The time limit for submitting a request for MAP assistance to the SKNCA is determined by the relevant DTA and starts from the first notification of the action resulting in taxation not in accordance with the DTA. Where the time limit specified in a DTA has not been met, a request for MAP assistance will not be accepted. The taxpayer would then be notified in writing that the request was not accepted due to time constraints.

Where there are no time limits specified (as in the case of the multilateral CARICOM Treaty), St. Kitts and Nevis' DTAs will follow Article 25 of the OECD Model Tax Convention and require that a request for MAP assistance must be submitted within three (3) years from the first notification of the action resulting in taxation not in accordance with the relevant DTA.

6.3 Fees For Filing A MAP Request

There are no fees associated with the filing of a MAP request with the SKNCA.

6.4 Taxpayer Requirements When Making A MAP Request

The SKNCA may request additional information necessary to determine if an objection in the MAP is justified or to further understand the facts and circumstances of the case. Taxpayers are expected to cooperate fully with the SKNCA by providing complete and accurate information without delay when requested, to facilitate an efficient resolution of disputes.

MAP discussions between CAs do not include direct taxpayer involvement. Therefore, taxpayer involvement in the MAP is generally limited to presenting the taxpayer's views and assisting in finding the facts without participating in the CA's discussion. Where appropriate, taxpayers may, however, be invited to make a presentation before the CAs to ensure a common understanding of the facts related to a particular case.

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7. Analysis Of A MAP Request

The SKNCA would process the MAP request and notify the taxpayer in writing stating whether the request has been accepted or rejected within thirty (30) days of receiving the taxpayer’s request. Where the MAP application form is incomplete, the SKNCA would request in writing that the missing information be provided within thirty (30) days from the date of the written correspondence. Where the information is still not provided, the SKNCA would be unable to further process the MAP application request.

The SKNCA would provide the taxpayer with the reasons for its decision where a request is rejected.

7.1 First Step - Unilateral

For MAP requests which are accepted and where St. Kitts and Nevis is the jurisdiction raising the adjustment, the SKNCA will first, liaise with the International Tax and Legal Compliance Division (ITLD) to determine if there was indeed taxation not in accordance with the Convention.

The ITLD would then advise the SKNCA of its findings. For MAP cases that appear to be justified/well founded, the SKNCA would attempt to resolve the matter unilaterally, without consulting the other CA. If the SKNCA is not itself able to arrive at a satisfactory solution, it would contact the CA of the other relevant Contracting State to initiate the bilateral stage of the MAP process.

7.2 Second Step – Bilateral

The SKNCA would endeavour to resolve the matter by mutual agreement with CAs of other Contracting States whose DTAs contain MAP provisions. It is important to note that the DTA requires CAs to negotiate with a view to avoid instances of double taxation. In the absence of mandatory binding arbitration, however, there is no guarantee that the case would be successfully resolved.

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8. Processing Times For A MAP Case

Whilst the time taken to complete a MAP case may vary according to its complexity, the SKNCA will endeavour to complete a case within two (2) years from the date of acceptance of the taxpayer's MAP Request. Timelines may be extended or reduced depending on the facts and circumstances of a particular case.

9. Resolution Of A MAP Case

There are a number of potential outcomes in a MAP case, including:

- Unilateral relief;
- CA agreement for full or partial elimination of double taxation;
- CA agreement is reached, including agreement to disagree; and
- MAP request withdrawn by the taxpayer.

If the CAs reach an agreement, the resolution would be confirmed by an exchange of letters between the CAs. The SKNCA would then communicate the resolution to the taxpayer in writing within 30 days. If the terms and conditions of the resolution are not satisfactory, the taxpayer is entitled to withdraw from the MAP process and pursue other domestic redress mechanisms, if still available. If the terms are satisfactory, the taxpayer should accept the MAP result in writing and should withdraw its domestic claims (if filed) and refrain from seeking any further recourse on the same issues and tax years.

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9.1 Implementing The MAP Agreement

If the taxpayer confirms in writing its acceptance of the mutual agreement, the SKNCA would instruct the Inland Revenue Department in writing to give effect to the mutual agreement and seek to ensure its implementation without delay. The taxpayer would also be contacted in writing to advise how any additional payment should be made. Revised tax computations would be required where applicable. Any additional tax due must be paid within thirty to sixty (30-60) days from the date of the Revised Notice of Assessment.

Where the applicable DTA so provides, the agreement shall be implemented notwithstanding any time limits in the domestic law of the Contracting States.

In cases where a refund is due to the taxpayer, the taxpayer would be duly informed and would be advised to contact the Inland Revenue Department to begin the process of obtaining the refund. The taxpayer would be required to submit revised tax computations for the affected accounting periods to the Inland Revenue Department. The tax paid would generally be refunded within thirty to sixty (30-60) days from the date of the Revised Notice of Assessment. Before a refund is paid, all the tax accounts of the taxpayer would be cleared.

9.2 Competent Authority Unable To Reach An Agreement

In the event that the SKNCA is unable to reach an agreement with the CA of the other Contracting State and in the absence of mandatory binding arbitration, the SKNCA would notify the taxpayer in writing, where possible within thirty (30) days of the CAs meeting, outlining why the agreement could not be reached. The SKNCA is not obliged to engage in further discussions with the other CA where the other CA has determined that an agreement cannot be reached.

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9.3 MAP Withdrawal By The Taxpayer

Where a taxpayer wishes to withdraw a MAP request, the taxpayer is required to provide the CA (to which it submitted the MAP request) with a notification, in writing, of the withdrawal of its MAP request, without delay. This notification should include the reason for the withdrawal.

10. Audit Settlements

Taxpayers are granted access to a MAP regardless of any audit settlements made with the Inland Revenue Department.

11. Interest And Penalties Relief

The SKNCA may waive interest and penalties depending on the resolution of the MAP and the nature of the circumstances which gave rise to the imposition of that interest and penalty.

12. Collections Process And MAP

Collection procedures would be waived for the assessed amount which the taxpayer is challenging via MAP. The assessed amount that the taxpayer is not challenging would follow the established collection guidelines.

MAP PROVISION IN TAX TREATIES

MAP PROVISION IN TAX TREATIES													
			Action 25(1) of the OECD Model Tax Convention ("MTC")		Article 9(2) of the OECD MTC		Anti-abuse	Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC		Arbitration	
			B.1	B.1	B.3	B.4	C.1	D.3	A.1	B.7	C.6		
Column 1	Column 2	Column 3	Column 4		Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11		
Tax Treaty Partner		Inclusion Art. 25(1) first sentence? If yes, submission to either competent authority? (new Art. 25(1), first sentence)	Inclusion Art. 25(1) second sentence? If no, please state reasons		Inclusion Art 9(2). If no, will your CA provide access to MAP in TP cases?	Inclusion provision that MAP Article will not be available in cases where your jurisdiction is of the assessment that there is an abuse of the DTC or of the domestic law? If no, will your CA accept a taxpayer's request for MAP in relation to such cases?	Inclusion Art 25(2) first sentence?	Inclusion Art 25(2) second sentence? If no, alternative provision in Art. 7 & 9 OECD MTC?	Inclusion Art 25(3) first sentence?	Inclusion Art. 25(3) second sentence?	Inclusion arbitration provision?		
	Y=yes N= signed pending ratification	E=yes, either CAs O=yes, only one CA N=No	Y=yes i=no, no such provision ii=no, different period iii=no, starting point for computing the 3 year period is different iv=no, other reason	if ii, specify period	Y=yes i = no and such cases will be accepted for MAP ii= no but such cases will not be accepted for MAP	Y = yes i= no and such cases will be accepted for MAP ii= no but such cases will not be accepted for MAP	Y=yes N=no	Y = yes i=no, but have Art 7 equivalent ii=no, but have Art 9 equivalent iii=no, but have both Art 7 & 9 equivalent N= no and no equivalent of Art. 7 and 9	Y=yes N=no	Y=yes N=no	Y=yes N=no	Y=yes N=no	if yes i=Art25(5) ii-mandatory other iii-voluntary
Canada	Y	No MAP art.	No MAP art.	N/A	ii	ii	No MAP art.	N	No MAP art.	No MAP art.	N	N/A	
Denmark	Y	No MAP art.	No MAP art.	N/A	ii	ii	No MAP art.	N	No MAP art.	No MAP art.	N	N/A	
New Zealand	Y	No MAP Art.	No MAP art.	N/A	ii	ii	No MAP art.	N	No MAP art.	No MAP art.	N	N/A	
Norway	Y	No MAP art.	No MAP art.	N/A	ii	ii	No MAP art.	N	No MAP art.	No MAP art.	N	N/A	
Sweden	Y	No MAP art.	No MAP art.	N/A	ii	ii	No MAP art.	N	No MAP art.	No MAP art.	N	N/A	
United Kingdom	Y	No MAP art.	No MAP art.	N/A	ii	ii	No MAP art.	N	No MAP art.	No MAP art.	N	N/A	
Switzerland	Y	N	i	N/A	i	i	N	N	N	N	N	N/A	
United States	Y	No MAP art.	No MAP art.	N/A	ii	ii	No MAP art.	N	No MAP art.	No MAP art.	N	N/A	
Antigua and Barbuda	Y	O	i	N/A	i	i	Y	N	Y	Y	N	N/A	
*Monsterrat	Y	O	i	N/A	i	i	Y	N	Y	Y	N	N/A	
Belize	Y	O	i	N/A	i	i	Y	N	Y	Y	N	N/A	
Dominica	Y	O	i	N/A	i	i	Y	N	Y	Y	N	N/A	
Grenada	Y	O	i	N/A	i	i	Y	N	Y	Y	N	N/A	
Guyana	Y	O	i	N/A	i	i	Y	N	Y	Y	N	N/A	
Jamaica	Y	O	i	N/A	i	i	Y	N	Y	Y	N	N/A	
Saint Lucia	Y	O	i	N/A	i	i	Y	N	Y	Y	N	N/A	
Saint Vincent and the Grenadines	Y	O	i	N/A	i	i	Y	N	Y	Y	N	N/A	
Trinidad and Tobago	Y	O	i	N/A	i	i	Y	N	Y	Y	N	N/A	
Monaco	Y	O	ii	5yrs	Y	i	Y	Y	Y	Y	N	N/A	
San Marino	Y	O	Y	N/A	Y	i	N	Y	Y	Y	N	N/A	
United Arab Emirates (UAE)	N	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A	
Barbados	Y	O	i	N/A	i	i	Y	N	Y	Y	N	N/A	

**SAINT CHRISTOPHER AND NEVIS
MUTUAL AGREEMENT PROCEDURES (MAP) APPLICATION**



SECTION 1 - TAXPAYER IDENTIFICATION

TAXPAYER ID:	<input type="text"/>	BIRTHDATE:	<input type="text"/> DAY	<input type="text"/> /	<input type="text"/> MONTH	<input type="text"/> /	<input type="text"/> YEAR
TAXPAYER NAME:	<input type="text"/>						
MAILING ADDRESS:	<input type="text"/>						
CITY / TOWN / VILLAGE:	<input type="text"/>				STATE:	<input type="text"/>	
COUNTRY:	<input type="text"/>			CODE:	<input type="text"/>		
PHONE:	<input type="text"/>	FAX:	<input type="text"/>	MOBILE:	<input type="text"/>		
E-MAIL ADDRESS:	<input type="text"/>						
PRIMARY ACTIVITY:	<input type="text"/>						
	<input type="text"/>						

SECTION 2 - TAX PERIODS

FROM:	<input type="text"/> DAY	<input type="text"/> /	<input type="text"/> MONTH	<input type="text"/> /	<input type="text"/> YEAR	TO:	<input type="text"/> DAY	<input type="text"/> /	<input type="text"/> MONTH	<input type="text"/> /	<input type="text"/> YEAR
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SECTION 3 - BASIS FOR REQUEST

- ATTRIBUTIONS OF PROFITS TO A PERMANENT ESTABLISHMENT (PE)
- TRANSFER PRICING - DETERMINATION OF THE PROFITS BETWEEN ASSOCIATED ENTERPRISES.

SECTION 4 - SYNOPSIS OF THE ISSUES

Include details of any appeals and litigations initiated by the taxpayer or other parties to the relevant transactions. Include copies of all relevant information that is evidence to the alleged double taxation including tax assessment/reassessment notices, objection notices, tax audit reports or any other equivalent documentation. A supplementary sheet can be attached.

- A REQUEST WAS SUBMITTED TO THE OTHER CONTRACTING STATE.
- THE CASE WAS SUBMITTED TO ANOTHER AUTHORITY WHICH RESOLVES TREATY RELATED ISSUES.

SECTION 5 - DECLARATION

I declare that all information given on this form is true and correct. I understand that the Government of Saint Christopher and Nevis has the authority to disclose the information provided to the other Contracting State. Please be aware that a person who makes a false declaration commits an offence under Section 5 of the Perjury Act, 2005 of the laws of Saint Christopher and Nevis and that person is liable to imprisonment for a term of seven (7) years or to a fine of thirty-thousand (XCD \$ 30,000.00) dollars.

FULL NAME:	<input type="text"/>						
TITLE:	<input type="text"/>						
SIGNATURE:	<input type="text"/>	DATE:	<input type="text"/> DAY	<input type="text"/> /	<input type="text"/> MONTH	<input type="text"/> /	<input type="text"/> YEAR