

(i) If both the CAs successfully resolve a MAP case, they would formalise a mutual agreement amongst themselves. The CA of India having jurisdiction over the case would intimate the Indian taxpayer who had applied for MAP about the terms and conditions of the resolution.

(ii) Acceptance or rejection of the MAP resolution is the prerogative of the Indian taxpayer but in either situation, the MAP case would be closed by both the CAs as resolved.

### Q13. What if MAP is not successful?

Ans. If both the CAs are unable to resolve a MAP case, they would close the MAP case as unresolved. The CA of India having jurisdiction over the case shall inform the Indian taxpayer about the non-resolution of the dispute.

Taxpayer may continue with domestic legal remedies.

### Q14. What are the benefits of MAP?

Ans.

- (i) Relief from double taxation.
- (ii) Avoids prolonged litigation.
- (iii) Provides certainty in cross-border tax disputes.
- (iv) In some treaties (e.g., US/UK/Denmark), taxpayers may defer tax payment by furnishing a **bank guarantee**, till the time MAP is resolved.

#### MAP Process Flow

Step	Action
1	Taxpayer files <b>Form 34F</b> with the Competent Authority (CA) in India.
2	Indian CA reviews and communicates with the CA of the treaty partner.
3	Both CAs exchange <b>position papers</b> and negotiate.
4	If resolved → Mutual agreement reached; taxpayer is informed.
5	Taxpayer accepts within <b>30 days</b> and withdraws domestic appeals.
6	Assessing Officer gives effect within <b>1 month</b> (refunds/adjustments).
7	If not resolved → Case closed as "unresolved"; taxpayer may pursue domestic remedies.

### C. Safe Harbour Rules under the Income-tax Act, 1961

#### Q. 1 What is the concept of Safe Harbour under the Income-tax Act, 1961?

Ans. Safe Harbour refers to circumstances where the income-tax authorities accept the transfer price declared by the taxpayer for specified international or domestic transactions. This reduces transfer pricing litigation, and provides certainty in tax assessments.

#### Q. 2 When the provisions of Safe Harbour Rules were introduced and under which section of the Income-tax Act, 1961?

Ans. Safe Harbour Rules were introduced vide the Finance (No.2) Act of 2009, with effect from April 1, 2009. It was introduced vide Section 92CB of the Income-tax

Act, 1961 and operationalized through Rules 10TA to 10TIC of the Income-tax Rules, 1962.

#### Q.3 What are the main objectives of Safe Harbour Rules?

Ans.

- To simplify compliance with transfer pricing regulations.
- To reduce litigation relating to Arm's Length Price (ALP).
- To enhance administrative efficiency.
- To promote ease of doing business by ensuring tax certainty.

#### Q.4 Who is eligible to opt for Safe Harbour?

Ans. Eligible assessee undertaking international or specified domestic transactions as defined under Rules 10TB and 10THB, such as:

- software development services or information technology enabled services or knowledge process outsourcing services
- contract research and development services wholly or partly relating to software development
- contract research and development services wholly or partly relating to generic pharmaceutical drugs
- Manufacture and export of core or non-core auto components
- Intra-group loans and corporate guarantees
- Supply of electricity, transmission of electricity, wheeling of electricity and purchase of milk or milk products by a co-operative society from its members

#### Q.5 What are the Safe Harbour margins for various transactions?

Ans. Margins depend on the nature and value of transactions, as prescribed in Rule 10TD or 10THC. For Examples-

- **Software development/ITeS:** 17–18% operating margin in relation to operating expenses.
- **KPO:** 18–24% operating margin in relation to operating expenses depending on employee cost in relation to operating expense.
- **Auto components:** 8.5–12% operating margin.
- **Intra-group loans:** Minimum interest rates linked to SBI's MCLR or foreign currency reference rates.
- **Corporate guarantee:** Minimum 1% commission.
- **Contract R & D services:** 24% operating margin
- **Diamond mining:** 4% or more of gross receipts.

#### Q.6 How can a taxpayer opt for Safe Harbour?

Ans. The taxpayer must file Form 3CEFA\3CEFB\3CEFC before the due date of filing the income tax return.

#### Q.7 What is the procedure for verification and acceptance?

Ans. Procedure for verification and acceptance is provided in Rule 10TE/10THD/10TIB. The steps involved are as follows:

- a. AO (Assessing Officer) verifies eligibility.

b. If in doubt, AO refers to the Transfer Pricing Officer (TPO).

c. TPO reviews and issues an order within 2 months of referral.

d. The taxpayer may file objections before the Commissioner (Transfer Pricing) within 15 days, who shall decide within 2 months from the end of month in which the objection filed by the assessee.

Once accepted, the ALP is deemed final and binding and the covered transactions are not subjected to TP Audit.

#### Q.8 How are Safe Harbour applications filed from FY 2024–25 onwards?

Ans. As per CBDT Notification No. 01/2024 dated 26.02.2024, Form 3CEFA must be filed electronically.

#### Q.9 What are the new Safe Harbour provisions for diamond mining companies?

Ans. Under Notification No. 124/2024 dated November 29, 2024, Rules 10TI to 10TIC and Form 3CEFC were introduced for foreign companies engaged in diamond mining.

- Applicable retrospectively from April 1, 2024.
- Must file Form 3CEFC before filing return.
- Profit deemed to be 4% or more of gross receipts.
- Not applicable if facts are incorrect or concealed.
- No recourse to Mutual Agreement Procedure (MAP) under DTAA.

#### Q.10 What happens after Safe Harbour is accepted?

Ans. Once the TPO or AO accepts the Safe Harbour, the declared ALP is binding on tax authorities, providing certainty to the taxpayer.

**Disclaimer:** The content of this page is only for basic understanding based on provisions presently available in Income-tax Act & Rules, subject to further changes. For the purpose of any compliances, provisions of Income-tax Act, Rules and notification must be referred.



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**Income Tax Department**  
Central Board of Direct Taxes



# Alternate Dispute Resolution



Madhuकर



## A. Dispute Resolution Panel (DRP)

### Q.1 What is the Dispute Resolution Panel (DRP)?

Ans. The DRP is an alternative forum where certain taxpayers can resolve disputes with the Income-tax Department prior to the finalization of the assessment order instead of filing an appeal with the Commissioner of Income-tax (Appeals) after the final assessment order is passed. The draft assessment order is issued by assessing officer (AO) in the cases of eligible assessee selected under scrutiny assessment. The assessee can file objections before the DRP and the AO, if aggrieved by draft assessment order issued by the AO within 30 days. DRP has to dispose these objections in a time bound manner. The final assessment order has to be passed by the AO in accordance with the direction of the DRP.

### Q.2 Who can approach the DRP?

Ans. (i) Non-resident taxpayers/eligible assessee.  
(ii) Any taxpayer/eligible assessee whose case involves transfer pricing adjustments.

### Q.3 Who are eligible assessee?

Ans. (i) Any person in whose case the variation arises as a consequence of the order of transfer pricing officer (TPO).  
(ii) Any non-resident not being a company or any foreign company.

### Q.4 Who constitutes the DRP?

Ans. The DRP is a collegium of three Commissioners of Income-tax, who jointly examine the taxpayer's objections and issue directions.

### Q.5 What is the procedure for filing objections before DRP?

Ans. (i) Objections must be filed in Form No. 35A, in person or through an authorized agent, within the specified 30-day period.  
(ii) Objections must be in English and submitted to the Secretary of the DRP.  
(iii) Objections should be filed in paper book form in quadruplicate, accompanied by:

- Four copies of the draft assessment order, duly authenticated.
- For draft assessments order under section 143(3) r/w 144A, include directions issued by Joint/ Additional Commissioner.
- For draft assessments under section 143(3) r/w 147, include copies of the original assessment order.
- Any evidence the assessee intends to rely upon.

Additional evidence (if any) may be filed with a separate application explaining reasons.

**Note:** Paper-book submission in quadruplicate is only for physical filing; online filing is now encouraged by CBDT.

### Q.6 What are the advantages of DRP?

Ans. (i) Time-bound resolution (within 9 months from draft assessment order passed by the AO).  
(ii) Taxpayer can appeal to ITAT for issues decided against the assessee.

(iii) No tax demand raised until final DRP directions.  
(iv) Provides certainty and faster resolution.

### Q.7 What are the locations where DRP Bench is functional?

Ans. DRP mechanism is available to all tax payers/ eligible assessee. The DRP Bench functional at Delhi, Mumbai and Bengaluru for all such eligible assessee to file their objections within 30 days of draft assessment order passed by the AO.

Sl. No.	Name of the Dispute Resolution Panel	Headquarters	Jurisdiction
1	DRP-1, Delhi		Areas lying within the DELHI limits of National Capital Territory of Delhi Areas lying within the territorial limits of State of Rajasthan, Haryana, Punjab, Himachal Pradesh, Jammu and Kashmir and Union territory of Chandigarh
2	DRP-2, DELHI	Delhi	Areas lying within the territorial limits of National Capital Territory of Delhi Areas lying within the territorial limits of States of Uttar Pradesh, Uttarakhand, Bengal, Bihar, Odisha, Sikkim, Assam, Manipur, Arunachal Pradesh, Nagaland, Tripura and Union territory of Andaman and Nicobar Islands
3	DRP-1, MUMBAI	Mumbai	Areas lying within the territorial limits of Municipal Corporation of Greater Mumbai, Navi Mumbai Municipal Corporation and districts of Thane and Raigarh in the State of Maharashtra Areas lying within the territorial limits of State of Maharashtra (other than areas lying within Municipal Corporation of Greater Mumbai, Navi Mumbai Municipal Corporation and districts of Thane and Raigarh in the state of Maharashtra)
4	DRP-2, MUMBAI	Mumbai	Areas lying within the territorial limits of Municipal Corporation of Greater Mumbai, Navi Mumbai Municipal Corporation and districts of Thane and Raigarh in the State of Maharashtra Areas lying within the territorial limits of States of Gujarat, Madhya Pradesh, Chhattisgarh and Union territories of Daman and Diu and Dadra and Nagar Haveli.

5	DRP, BENGALURU	Bengaluru	Areas lying within the territorial limits of States of Karnataka, Tamil Nadu, Andhra Pradesh, Telangana, Kerala, Goa and Union territories of Puducherry and Lakshadweep
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## B. MUTUAL AGREEMENT PROCEDURE (MAP)

### Q1. What is MAP?

Ans. Mutual Agreement Procedure (MAP) is an **alternate tax dispute resolution mechanism** available to taxpayers under India's Double Taxation Avoidance Agreements (DTAAs). It helps resolve disputes leading to **double taxation** or taxation not in accordance with the treaty.

MAP can help in relieving double taxation either fully or partially.

Almost all DTAAs entered into by India have the MAP Article and it provides an additional dispute resolution mechanism to taxpayers in addition to those available under the domestic laws of India.

A taxpayer can request for assistance under MAP regardless of the remedies provided under the Indian domestic law. MAP enables the **Competent Authorities (CAs)** of India to engage with the CAs of other treaty partners and facilitates discussions and negotiations between both treaty partners to resolve international tax disputes, which are not in accordance with the relevant DTAAs.

### Q2. What are the issues which can be resolved under MAP?

Ans. MAP can resolve **cross-border tax disputes** that lead to double taxation or taxation not in accordance with a DTAAs which could either be juridical double taxation (same income taxed twice in the hands of the same entity in two different countries) or economic double taxation (same income taxed in the hands of two separate entities, who are Associated Enterprises, in two different countries). Some of the common issues include:

- **Transfer Pricing adjustments** made by tax authorities.
- **Existence of a Permanent Establishment (PE)**.
- **Attribution of profits** to a PE.
- **Characterisation or re-characterisation of income/expenses** (e.g., Royalty, Fees for Technical Services, Interest).

- In a situation where the Indian tax authorities apply domestic anti-abuse provisions.

Issues relating to domestic law are outside the MAP process.

### Q3. Who can apply?

Ans. Indian taxpayers aggrieved by an order/action of tax authorities of other countries or specified territories (treaty partners) causing taxation not in accordance with the relevant DTAAs.

Non-resident taxpayers, aggrieved by actions of Indian tax authorities, through the CAs of their respective countries or specified territories (treaty partners).

### Q4. How to apply?

Ans. (I) File **Form No. 34F** under Rule 44G of Income-tax Rules.  
(ii) Attach supporting documents (orders, notices, evidence).  
(iii) Submit the form and attached documents to the relevant **Competent Authority (CA)**:

- **The Joint Secretary, FT&TR-I, CBDT (New Delhi)**: Europe & North America (including Caribbean)
- **The Joint Secretary, FT&TR-II, CBDT (New Delhi)**: Rest of the world.

### Q5. What is the time limit?

Ans. The time limit for making an application for MAP is generally three years (depending upon the DTAAs) from the first notification of the action giving rise to taxation not in accordance with the DTAAs.

### Q6. Do I need to finish domestic appeals first?

Ans. MAP and domestic remedy proceedings can be availed by the taxpayers simultaneously. However, in cases where the Income Tax Appellate Tribunal ('ITAT', hereinafter) in India has passed an order in respect of the same disputes that are also being examined under MAP, the MAP shall be closed as having been resolved by a domestic remedy. If the ITAT order does not resolve the disputes but only sets them aside to be adjudicated afresh, then MAP can be availed after the fresh adjudication by tax authorities, if requested for.

### Q7. Can MAP be applied at the draft order stage?

Ans. No, MAP is invoked only after the order causing grievance is finalised by the tax authorities.

### Q8. Can taxpayers join negotiations?

Ans. No, MAP discussions are **between Competent Authorities only**. Taxpayers can submit the relevant orders and documentation to establish their case.

### Q9. How long does MAP take?

Ans. MAP cases are generally resolved within **24 months**.

### Q10. Is the MAP outcome binding for the taxpayers?

Ans. **No**. The taxpayer has to convey the acceptance of the MAP outcome within a time period of 30 days and to submit evidence of withdrawal of domestic appeals. The Assessing Officer has to give MAP effect within one month from the end of the month in which he receives the letter of the CA conveying MAP resolution. The order giving effect would process the refund or demand, as per the MAP resolution.

### Q11. Can MAP outcomes apply to future years?

Ans. No, outcomes apply **only to the covered years**.

### Q12. What if MAP is successful?

Ans.