

# AON Consulting Pvt. Ltd. v. Principal Commissioner of Income Tax [2024, Delhi High Court]

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## 1. Facts

### 1.1. Arguments of the parties

AON Consulting Pvt. Ltd., formerly Hewitt Associates India Pvt. Ltd., provided human resources consulting, payroll processing, business process outsourcing and software development services to associated enterprises and unrelated parties. During assessment year 2008-09, the taxpayer entered into several international transactions and prepared a transfer pricing study applying the Transactional Net Margin Method (TNMM). Based on a set of sixteen comparable companies, the taxpayer calculated its profit level indicator at 15.69%, while the average margin of the comparables was 13.06%. On that basis, the taxpayer concluded that its transactions were consistent with the arm's length principle.

The Transfer Pricing Officer (TPO) rejected the taxpayer's economic analysis. According to the tax authority, the study contained defects regarding filters, comparability and the use of data. The TPO accepted TNMM as the most appropriate method but selected a different set of comparables, which resulted in substantially higher margins. The proposed upward adjustment amounted to approximately INR 440.6 million, consisting of approximately INR 417.9 million relating to US transactions and INR 22.6 million relating to non-US transactions.

While the litigation was pending, the taxpayer initiated a MAP under Article 27 of the India-US Double Taxation Avoidance Agreement (DTAA) to resolve the dispute concerning US transactions. The competent authorities of India and the United States agreed on a framework to resolve the transfer pricing dispute for IT services and IT-enabled services for various assessment years. The taxpayer accepted the MAP outcome and withdrew the grounds of appeal relating to US transactions. The transfer pricing adjustment for those transactions was substantially reduced under the MAP outcome. The remaining controversy concerned the non-US transactions.

The Revenue argued that the same framework agreed by the Indian and US competent authorities should also be used for the non-US transactions. That po-

sition appears to have been based on consistency and administrative efficiency: similar services rendered by the same taxpayer should, in the Revenue's view, follow the same transfer pricing framework. The taxpayer disagreed. It argued that a MAP resolution is based on consensus between the competent authorities of specific contracting states and cannot be automatically extended to transactions involving jurisdictions that were not parties to the negotiations and whose tax authorities were not bound by the agreement.

## 2. Court decision

The Delhi High Court ruled in favor of the taxpayer. The Court emphasized that MAP is a treaty-based mechanism designed to eliminate double taxation or taxation not in accordance with the applicable treaty through negotiations between competent authorities. The process is consensual and operates within the framework of a specific double taxation agreement. Therefore, its outcome must be confined to the issues, transactions and jurisdictions that were the subject of the competent authorities' agreement.

The Court made a distinction between a MAP settlement and the statutory determination of the arm's length price. An agreement reached under MAP cannot substitute the determination of the arm's length price under domestic law for transactions that were not covered by the MAP. For the non-US transactions, the arm's length principle had to be determined independently<sup>1</sup>. The ITAT's direction to apply the MAP framework to non-US transactions was therefore held to be contrary to law.

## 3. Critical analysis

### 3.1. *The legal nature of MAP settlements*

The Court's reasoning is significant because it preserves the consensual nature of MAP. If a taxpayer accepts a negotiated resolution for one treaty dispute, that acceptance should not be treated as a waiver of its right to dispute transfer pricing adjustments in transactions involving other jurisdictions. Nor should the tax authority of one country be able to impose on non-covered transactions a framework negotiated with a different treaty partner. The decision therefore restores a fundamental balance between tax certainty mechanisms and the independent application of transfer pricing law.

The Court's decision is consistent with the structure of Article 25 of the OECD Model Tax Convention and with the general understanding of MAP in international tax law. MAP is not an adjudicatory mechanism. It does not function as a court judgment or as an administrative precedent of general application. Rather, it is a procedure through which competent authorities seek to resolve

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<sup>1</sup> Under Section 92C of the Indian Income Tax Act and Rule 10B of the Income Tax Rules.

taxation not in accordance with a treaty. The result may reflect legal analysis, administrative compromise, practical considerations and the shared interest of states in eliminating double taxation. As explained by Professor Barbosa, the outcome of a MAP is an agreement between the involved parties, and this consensual character of the solution reached by the competent authorities that gives MAP its distinctive diplomatic and negotiated nature as a mechanism for the resolution of international tax disputes<sup>2</sup>.

In detail, MAP is an autonomous, preventive, bilateral, and informal dispute resolution mechanism established under tax treaties<sup>3</sup>. OECD characterizes MAP as a treaty instrument “to resolve disputes regarding the interpretation or application of their provisions”, and a “mechanism to achieve bilaterally agreed solutions for tax treaty disputes, rather than requiring them to pursue parallel processes through domestic dispute resolution mechanisms in an uncoordinated manner”<sup>4</sup>. Therefore, MAP depends on cooperation between competent authorities and operates primarily to ensure treaty conformity.

The mechanism may eliminate juridical or economic double taxation. However, its diplomatic and negotiated character means that a MAP outcome should not be treated as a generally binding rule for transactions outside its scope. In addition, the MAP outcome not necessarily should be considered the realization of the arm’s principle. Therefore, an MAP agreement should be interpreted only within the scope of the treaty and the transactions that were specifically covered by the negotiations between the competent authorities.

This perspective explains why the Delhi High Court was correct to reject the extension proposed by the Revenue. If MAP agreements were automatically extrapolated to non-covered transactions, the competent authorities would indirectly determine transfer pricing outcomes for jurisdictions and taxpayers’ relationships that were not represented in the negotiation. Such a result would weaken the principle of consent underlying MAP and could create double taxation instead of eliminating it, since the tax authorities of the non-US jurisdictions would not be bound by the India-US agreement.

Finally, in the AON case, there would also be the possibility of pursuing a MAP involving all relevant jurisdictions (i.e., India, the United States, and other non-U.S. jurisdictions), potentially through a multilateral MAP, as contemplated

<sup>2</sup> BARBOSA, Mateus Calicchio. O procedimento amigável nos acordos de bitributação brasileiros. *Série Doutrina Tributária* v. XXIII. São Paulo: Quartier Latin, 2018, p. 139.

<sup>3</sup> According to the Professor Alberto Xavier, in *Direito tributário internacional do Brasil*. Rio de Janeiro: Forense p, 165.

<sup>4</sup> According to the report *Manual on effective mutual agreement procedures* (2026 edition): inclusive framework on BEPS. Paris: OECD Publishing, 2026, p. 6.

by the OECD<sup>5</sup>. This would be a complex mechanism and, in principle, difficult to implement, given the need for coordinated action among multiple jurisdictions and the existence of applicable tax treaties. Nevertheless, in appropriate circumstances, it could represent a viable alternative for addressing transfer pricing disputes of the kind illustrated by AON.

### 3.2. MAP and the arm's length principle

MAP and the arm's length principle frequently interact, but they do not have the same function. The arm's length principle is a substantive rule for allocating profits among associated enterprises<sup>6</sup>.

The arm's length principle is set forth in the Article 9 of the OECD Model Tax Convention as follows: where "conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly".

According to Schoueri, the arm's length principle is a key mechanism for converting transactions between related parties into market-condition transactions, so that the income of companies trading with related parties is measured according to the same parameters used to determine the income of independent parties, thereby giving effect to the principle of equality and the ability-to-pay principle in transfer pricing legislation<sup>7</sup>.

The application of the arm's length principle requires the accurate delineation of the controlled transaction, identification of economically relevant charac-

<sup>5</sup> "However, where both competent authorities are of the view that a request filed under a tax treaty provision equivalent to Article 25(1) by a taxpayer cannot be resolved without the involvement of other third jurisdictions as well, paragraph 55.2 of the Commentary on Article 25 of the OECD Model Tax Convention (OECD, 2019[1]) refers to the possibility of two competent authorities agreeing on a general basis, pursuant to Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2019)", as provided by the *Manual on the handling of multilateral mutual agreement procedures and advance pricing arrangements (MoMA)*. Paris: OECD Publishing, [s.d.], p. 16.

<sup>6</sup> "In the field of corporate taxation, the arm's length standard determines the adjustment of profits derived from transactions undertaken with associated entities (controlled transactions) to reflect – for tax purposes – the outcome that independent parties would have agreed on." as provided by Aitor Navarro in "The arm's length standard and tax justice: reflections on the present and the future of transfer pricing, in *IBFD World Tax Journal August 2018*, p. 352.

<sup>7</sup> Based on "Arm's length: beyond the guidelines of the OECD". *Bulletin for International Taxation* v. 69. Amsterdam: IBFD, December 2015. In this study, in summary, Professor Schoueri argues that the arm's length principle (ALP) should be preserved in its original form, as an instrument of equality among taxpayers, that the BEPS proposals go beyond the scope of the ALP and tax treaties, and that standardization through rebuttable fixed margins (RFM) represents a legitimate and more appropriate path for developing countries.

teristics, selection of the most appropriate method, comparability adjustments where necessary, and testing of the resulting price or margin. MAP, by contrast, is a procedural mechanism for resolving treaty disputes and eliminating taxation not in accordance with a tax treaty.

The OECD Transfer Pricing Guidelines emphasize that controlled transactions must be analyzed on the basis of their actual conduct and economically significant characteristics. This transaction-specific approach is incompatible with mechanical extrapolation. A MAP settlement may be persuasive evidence of how two competent authorities evaluated a specific dispute, but it is not necessarily evidence that the same margin, method or framework is appropriate for transactions with different counterparties, markets, currencies, risks or contractual terms.

The AON decision therefore preserves the analytical integrity of the arm's length principle. It prevents administrative convenience from replacing comparability analysis. Even if the taxpayer provides similar services to multiple associated enterprises, the transfer pricing analysis must examine whether the relevant economic circumstances are genuinely comparable. A uniform solution may be possible, but only after the legal and factual analysis required by domestic law; it cannot be imposed merely because an MAP agreement exists for another set of transactions.

### ***3.3. Comparative analysis with international transfer pricing cases***

#### ***3.3.1. Germany v. "NO-MAP GmbH"***

A useful comparison can be drawn between AON Consulting Pvt. Ltd. v. PCIT and the 2019 decision of the German Federal Fiscal Court (BFH) concerning the application of the EU Arbitration Convention<sup>8</sup>. In the German case, the taxpayer sought the initiation of MAP proceedings to eliminate double taxation resulting from transfer pricing adjustments made in Germany. The German tax authorities refused to proceed with the MAP based on the exception contained in Article 8 of the Arbitration Convention, which allows the denial of the procedure in cases involving serious tax violations. The BFH upheld the tax authorities' decision and confirmed that the treaty itself defines both the availability and the limits of the MAP mechanism.

Although the issue examined by the BFH differed from that addressed in AON, both cases emphasize the treaty-based and bounded nature of mutual agreement procedures. In the German case, the Court focused on the circumstances under which a taxpayer may access the MAP. In AON, the Delhi High

<sup>8</sup> Germany vs "NO-MAP GmbH", September 2019, Bundesfinanzhof, Case No IR 82/17. Available on <https://tpcases.com/germany-vs-g-gmbh-september-2019-bundesfinanzhof-case-no-ir-82-17>. Accessed on July 26, 2026.

Court analyzed the effects of a MAP settlement once an agreement had been reached. Together, the decisions demonstrate that MAPs operate strictly within the boundaries established by the applicable international arrangement and cannot produce effects beyond their defined scope.

This reasoning reinforces the central conclusion reached in AON: agreements negotiated by competent authorities are specific solutions designed to address particular transfer pricing disputes involving identified taxpayers, transactions and years. Accordingly, the outcome of an MAP should not automatically be extrapolated to other transactions, jurisdictions or tax periods not covered by the agreement. The German case therefore provides additional support for the proposition that the legal effects of competent authority agreements must remain confined to the circumstances expressly contemplated by the relevant treaty framework.

### 3.3.2. *LG Electronics Canada Inc. v. Canada (Attorney General)*

*LG Electronics Canada Inc. v. Attorney General of Canada* (2026 FC 895) involved a bilateral advance pricing arrangement (BAPA) entered into between the Canadian and South Korean competent authorities concerning intercompany transactions between LG Electronics Canada and its Korean parent company<sup>9</sup>. The BAPA process began in 2009, was tentatively concluded in 2015, formally completed in 2017, and subsequently led to transfer pricing reassessments issued by the Canada Revenue Agency (CRA) in 2018. The dispute before the Federal Court did not concern the transfer pricing methodology agreed upon in the BAPA itself, but rather the taxpayer's request for relief from interest charges arising from the lengthy BAPA process.

The Court ultimately set aside the CRA's decision denying additional relief and remitted the matter for reconsideration, recognizing that the original administrative decision contained factual errors. Notably, the case highlights that the BAPA process was controlled by the competent authorities of Canada and South Korea and related to specific transactions and tax years, reinforcing the understanding that agreements reached between competent authorities are negotiated, bilateral solutions tailored to circumstances rather than generally applicable transfer pricing determinations.

While the Canadian decision in *LG Electronics Canada Inc. v. Attorney General of Canada* did not address an MAP case, it reinforces an important principle underlying the AON decision. The Court recognized that the BAPA process was controlled by the competent authorities of Canada and South Korea and re-

<sup>9</sup> Canada vs LG Electronics Canada Inc., July 2026, Federal Court, Case No T-2545-25. Available on <https://tpcases.com/canada-vs-lg-electronics-canada-inc-july-2026-federal-court-case-no-t-2545-25/>. Accessed on July 25, 2026.

sulted from a bilateral negotiation concerning specific transactions and taxation years.

Similar to the reasoning adopted in AON, this supports the view that agreements reached through MAPs or BAPAs derive their authority from the consent of the competent authorities and should therefore be confined to the transactions and periods covered by the agreement. Consequently, such agreements should not automatically determine the treatment of unrelated transactions or other jurisdictions without an independent arm's length analysis.

### ***3.4. Implications for Brazil under Law No. 14,596/2023 and NI RFB No. 2,161/2023***

The AON decision is particularly relevant for Brazil, which only recently adopted an OECD-aligned transfer pricing framework through Law No. 14,596/2023, regulated by RFB Normative Instruction (NI) No. 2,161/2023. Unlike the former Brazilian system, which relied largely on predetermined margins and formulaic methods, the new regime is based on the arm's length principle and requires complex economic, financial and comparability analyses.

Given Brazil's long-standing tradition of tax controversy and litigation, it is reasonable to expect that transfer pricing disputes will increase during the transition to the new model, especially as taxpayers and tax authorities gain experience with concepts such as accurate delineation, "DEMPE" functions, risk allocation and profit attribution. In this context, alternative dispute resolution mechanisms, particularly MAP, are likely to play an increasingly important role in preventing and resolving instances of double taxation.

The reasoning adopted by the Delhi High Court in AON case therefore provides valuable guidance for Brazil, as it clarifies that MAP settlements are negotiated solutions designed to resolve specific disputes involving identified transactions, jurisdictions and tax years, and should not automatically be extrapolated to unrelated transactions without a separate arm's length analysis.

In particular, from a Brazilian perspective, the case supports four conclusions. First, MAP settlements should be interpreted according to their objective, subjective, temporal, and jurisdictional scope. Second, the acceptance of an MAP outcome by a taxpayer should not be treated as a general admission that the same pricing framework applies to all other transactions. Third, the tax authorities should not rely on an MAP concluded with one treaty partner as a substitute for the transfer pricing analysis required for transactions with other jurisdictions. Fourth, taxpayers should carefully document why transactions outside a MAP or APA are similar to, or different from, the covered transactions.

It is important to highlight the impossibility of isolating and transferring individual elements of a MAP outcome to other cases. A MAP is not a purely technical exercise aimed exclusively at identifying the arm's length result. Rather, it is

a bilateral process through which competent authorities seek a mutually acceptable resolution of a treaty dispute. In this sense, a MAP outcome should be understood as an integrated exercise of fiscal diplomacy between contracting states rather than as a collection of autonomous transfer pricing conclusions capable of generating precedential effects beyond the specific dispute for which they were negotiated. This political and consensual dimension further explains why its terms cannot be detached from the specific context in which the agreement was reached.

From this perspective, it may be misleading to treat a particular margin, transfer pricing method, profit allocation, or adjustment accepted in a MAP as if it were a stand-alone arm's length finding. Although the agreement should be informed by the arm's length principle, the outcome can also be influenced by administrative considerations, litigation risks, evidentiary limitations, the objective of eliminating double taxation, and broader tax policy concerns. Consequently, the result of a MAP, as also an exercise of fiscal diplomacy, cannot necessarily be equated with the outcome that would have been reached through a purely technical application of transfer pricing rules. In addition, the decision is also important for legal certainty. As mentioned, Brazil's transition to an OECD-aligned system increases the importance of cooperative mechanisms, but it also increases the complexity of disputes. If MAP outcomes were freely extrapolated, taxpayers could be discouraged from using MAP, because acceptance of one settlement might expose them to adverse consequences in other jurisdictions. AON avoids this problem by confirming that MAP is agreement-specific, while transfer pricing analysis remains transaction-specific.

It is important to note that the MAP has long been available to Brazilian taxpayers through Article 25 of Brazil's tax treaties and, more recently, through RFB Normative Instruction (NI) No. 1,846/2018, which regulates the domestic MAP procedure. However, the mechanism was historically underutilized in the transfer pricing context because Brazil's former transfer pricing regime was based on fixed margins and formulaic methods that were not aligned with the OECD arm's length principle. As a result, MAPs often offered limited practical value in resolving transfer pricing disputes, since the underlying Brazilian rules differed substantially from those applied by treaty partners<sup>10</sup>.

<sup>10</sup> According to the OECD's Report "Making dispute resolution more effective – consolidated information on mutual agreement procedures 2025", in 2024, Brazil had an end inventory of 69 MAP cases, of which 57 were related to "attribution/allocation cases". According to the detailed OECD's report *Mutual agreement procedure statistics per jurisdiction – Brazil 2016-2024* (post-MAP Statistics Reporting Framework) linked to the previous one, the 2024 end inventory of transfer pricing cases is equivalent to 55 (available on <<chrome-extension://efaidnbmnnnibpcajpglclefndmkaj/https://www.oecd.org/content/dam/oecd/en/topics/policy-issue-focus/map-statistics/map-statistics-brazil.pdf>>), accessed on July 26, 2026.

As noted by Alberto Xavier<sup>11</sup>, the OECD has encouraged the use of MAP as a platform for concluding APAs since the late 1990s. These agreements may be bilateral or even multilateral in nature, involving not only the taxpayer and a single tax administration, but also multiple competent authorities with jurisdiction over the multinational enterprise. In this context, MAPs and APAs are closely connected instruments designed to enhance tax certainty, prevent disputes and avoid double taxation in transfer pricing matters.

With the enactment of Law No. 14,596/2023 and the adoption of an OECD-aligned transfer pricing framework, this scenario is expected to change significantly. As Brazilian transfer pricing rules become increasingly consistent with international standards, MAPs are likely to emerge as a more effective and attractive mechanism for resolving transfer pricing disputes and eliminating double taxation, particularly in complex cases involving economic analyses, comparability assessments and cross-border profit allocation.

#### 4. Conclusion

The Delhi High Court's decision in *AON Consulting Pvt. Ltd. v. Principal Commissioner of Income Tax* is an important contribution to international transfer pricing jurisprudence. The Court correctly distinguished between a negotiated MAP settlement and the arm's length determination required under domestic law. By refusing to extend the India-US MAP framework to non-US transactions, the Court preserved the consensual nature of treaty dispute resolution and protected the integrity of statutory transfer pricing analysis.

For Brazil, the case is particularly instructive. Law No. 14,596/2023 and NI No. 2,161/2023 require accurate delineation, comparability analysis and selection of the most appropriate method. MAPs and APAs will be increasingly important for tax certainty, but they should not be understood as mechanisms capable of replacing the independent arm's length analysis required for non-covered transactions.

The main lesson of AON is that competent authority agreements should not be viewed as universally applicable benchmarks: while the arm's length principle requires an independent analysis of each controlled transaction, MAP and APA outcomes remain circumscribed by the factual and legal scope of the agreement itself. In addition, MAP is also an exercise in fiscal diplomacy between competent authorities. For that reason, its outcome should not be regarded as a pure arm's length determination capable of generating autonomous conclusions that may be applied, in whole or in part, to different transactions, tax years, or jurisdictions.

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<sup>11</sup> In *Direito tributário internacional do Brasil*, p. 169.

This distinction should guide Brazilian taxpayers, the tax authorities and courts as Brazil deepens its integration into the OECD transfer pricing framework. Properly understood, AON case does not weaken MAP. On the contrary, it strengthens the mechanism by preserving its legitimacy, respecting its limits and ensuring that negotiated solutions remain faithful to their treaty-based purpose.