



States of Guernsey  
Income Tax

## **A Guide to Using the Mutual Agreement Procedure in Guernsey's Double Taxation Agreements**

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## Introduction

A Double Taxation Agreement/Arrangement (“DTA”) is an official agreement between two jurisdictions on the administration of taxation when the domestic tax laws of the two jurisdictions apply simultaneously to a particular issue or taxpayer (e.g. when a taxpayer resident in one jurisdiction derives income from sources in the other jurisdiction).

DTAs are intended to provide a means of settling, on a uniform basis, the most common problems that arise in the field of international double taxation. To these ends, a tax convention may resolve some common disputes and provide rules determining:

- the jurisdiction in which a taxpayer is treated as resident for the purposes of the DTA;
- the treatment given to specific types of income;
- the allowable rates of withholding tax on specific types of cross-border payments; and
- the manner in which issues of taxation not in accordance with a DTA are to be resolved.

Although Guernsey has concluded a number of DTAs, occasionally it may transpire that taxpayers are still taxed twice, or they may believe that they have not been dealt with correctly under the terms of a DTA by one, or both, of the jurisdictions.

All of our existing comprehensive DTAs include provisions to initiate a mutual agreement procedure (“MAP”), in order to try and reach a satisfactory solution when this happens, and the taxpayer considers this to be contrary to the DTA and they have been unable to reach a satisfactory solution through normal correspondence channels.

Guernsey also has a number of limited DTAs (which deal with certain aspects of double taxation, but are not as far reaching as comprehensive DTAs). All of these also contain a MAP.

There are also some of Guernsey’s Tax Information Exchange Agreements (TIEAs) which include certain double taxation matters, which incorporate MAP (e.g. with Japan and New Zealand).

Taxpayers themselves must request a MAP. Both private individuals and companies may initiate a MAP.

The taxpayer is not a formal party to the consultations between the competent authorities as such, once a MAP request has been initiated, but may be invited to participate informally at the discretion of both of the competent authorities. Where we consider such participation is likely to be useful, Guernsey will press for, but cannot guarantee it. The

position of the competent authorities of Guernsey's DTA partners in this respect is outside Guernsey's control.

### **When can I initiate a MAP?**

Some examples of when a MAP may be appropriate are:

- A taxpayer is subject to additional tax in one jurisdiction because of an adjustment to the price of goods or services transferred to or from the other jurisdiction. The taxpayer may request that the competent authority of the first jurisdiction reduce or withdraw the adjustment and/or that the competent authority of the second jurisdiction allow a corresponding adjustment to the income of the related party to prevent double taxation.
- A taxpayer is considered to be a resident of two jurisdictions under each jurisdiction's domestic law, and each jurisdiction asserts that the taxpayer is a resident of its jurisdiction for purposes of the relevant DTA. If this is unresolved, the taxpayer could be subject to taxation on the same income in both jurisdictions which may not be in accordance with the DTA. A request to the competent authorities would initiate discussions about the proper application of the residency article of the DTA.
- A withholding tax is levied beyond what is allowed within a DTA by one jurisdiction on a payment to a resident of the other jurisdiction. The taxpayer may request that the competent authorities address this matter of taxation not being in accordance with the DTA.
- A taxpayer operating a branch in one jurisdiction is subject to additional tax because that jurisdiction makes an adjustment to the income allocated to the branch. The taxpayer may ask the competent authorities to prevent double taxation by allowing an increased foreign tax credit in the other jurisdiction, or by seeking the agreement of the competent authority in the jurisdiction where the branch is located to reduce the adjustment.
- A taxpayer subject to tax as a resident in one jurisdiction on income, including income from carrying on a business in the other jurisdiction, is taxed in that other jurisdiction on the business income earned there, despite not having a permanent establishment in that jurisdiction under the DTA. The taxpayer may request the competent authorities to address the issue of taxation not in accordance with the DTA.

- A taxpayer is uncertain whether the DTA covers a specific item of income, or is unsure of the characterisation or classification of the item related to a cross-border issue. The taxpayer may approach the competent authorities for clarification.
- A taxpayer is in disagreement as to whether the conditions for the application of an anti-abuse provision in a DTA have been met or as to whether the application of a domestic law anti-abuse provision is in conflict with the provisions of a DTA.

The above is for illustration purposes only, and is not intended to be an exhaustive list of all the circumstances in which a MAP may apply.

You will not be precluded by the Guernsey competent authority from using the MAP procedure simply because you had already agreed the tax treatment in a particular situation with the Director of Income Tax, if using the MAP procedure is otherwise valid under the relevant DTA.

### **Mutual Agreement Procedure Request (“MAP request”)**

If you are a Guernsey resident, or otherwise consider that you are entitled to benefits under a DTA, and are exposed to double taxation or taxation not in accordance with the provisions of a DTA, entered into between Guernsey and another jurisdiction, you can present your case to the Guernsey competent authority for assistance.

“Competent authority” is simply the title given to the person(s) formally authorised to deal with matters arising under a DTA. For Guernsey, the Director of Income Tax has statutory responsibility for the care and management of the Income Tax Law, but the Deputy Directors can also act as competent authorities. The Director may delegate responsibility for dealing with MAP requests to another officer at Guernsey Income Tax (in which case they will be a competent authority for that purpose).

The Guernsey competent authority is committed to ensuring a good faith application of the provisions of a DTA. For example, Guernsey does not use performance indicators for their competent authority functions and staff in charge of MAP processes based on the amount of adjustments or tax revenue arising from dealing with MAP cases.

If your MAP request is validly made and is considered to be justified, and is not a matter that the Guernsey competent authority can agree can be dealt with by him alone, the Guernsey competent authority will discuss the case with the competent authority of the other tax administration and try to resolve it in accordance with the relevant DTA. If we do not think the request is valid or justified, we will explain to you why we believe that to be

so. You will be given the opportunity of clarifying any misunderstandings which may have led to an erroneous judgment, or revising your request to make it valid, if appropriate.

In respect of most of our DTAs, you may be able to present your case to the competent authority of the other jurisdiction, if you prefer. If they accept your request, they will then discuss the matter with the Guernsey competent authority.

Most of our current DTAs require that a MAP request is initiated within 3 years of the first notification of the matter to which the request relates (the DTA with Qatar provides a 2 year time limit).

***Provisions of DTAs can differ, one to another, as they are negotiated on a bilateral basis. Please consult the Mutual Agreement Procedure Article in the relevant DTA before making a MAP request. Copies of all of Guernsey's current comprehensive and limited DTAs can be accessed online at <https://www.gov.gg/dta> and TIEAs at <https://www.gov.gg/tiea>.***

It is possible that the provisions of the relevant DTA may have changed since it was originally signed. If you make your MAP request to the Guernsey competent authority, you will be advised if any such changes affect your request. If they do, you will be asked if you wish to continue to pursue your request or amend it, as appropriate.

If you have a professional adviser who assists you in tax matters, such as an accountant or tax adviser, you may wish to consult with them before making a MAP request. They may suggest that they make the request and handle the matter on your behalf. Whether you wish to do that is a decision for you. You are not required to be professionally represented to make a MAP request.

There is no charge or fee imposed by the Guernsey competent authority for dealing with a MAP request on your behalf.

The Guernsey competent authority will endeavour to tell you how it will deal with your request within two months of receiving it. You will be notified of how your request is progressing at regular intervals, or as and when significant developments occur.

The Director of Income Tax aims to conclude MAP requests within 2 years of them being initiated. Many may be resolved in a much shorter timeframe, although how long a particular request may take to resolve will depend on the complexity of the matter and the assistance given in reaching a resolution by the competent authority of the other jurisdiction.

Unfortunately, on occasion competent authorities are unable to come to an agreement. Reasons for unresolved double taxation range from restrictions imposed by domestic law on a tax administration's ability to compromise to stalemates on economic issues such as valuations. You will be advised if your MAP request cannot be resolved by agreement.

Some of Guernsey's DTAs do address the inability of the competent authorities to reach a decision by providing for an arbitration procedure. The relevant DTAs are those with Hong Kong, the Isle of Man, Jersey, Liechtenstein, Luxembourg and the Netherlands. The provisions of, and restrictions relating to, these can differ from DTA to DTA and so the precise terms of the availability of arbitration under these DTAs should be examined if a MAP request cannot be resolved by the competent authorities, including a failure to agree within a reasonable period.

***In the resolution of MAP requests, the Director of Income Tax undertakes that the Guernsey competent authority will engage in discussions with other competent authorities in a principled, fair, and objective manner, with each case being decided on its own merits and not by reference to any balance of results in other cases. As most of Guernsey's DTAs are based on the OECD Model Tax Convention, to the extent applicable, the Commentary to the OECD Model Tax Convention will be taken into account (the Commentary is a detailed explanation of the intention and meaning of each of the Articles of the OECD Model).***

***The Guernsey competent authority aims to be consistent and reciprocal in the positions it takes and will not change position on an issue from case to case, depending on which side of the issue produces the most revenue.***

***In return, we would expect from you that you will deal with requests from us for additional information in as short a time as possible, so that resolution of the request is not delayed unduly.***

***As an illustration of this commitment for fair and even handed treatment of issues arising under DTAs, it should be noted that, as at the date of first publication of this Guide (November 2017), Guernsey Income Tax had not had the need to institute consultations with any other competent authority in respect of any formal MAP requests.***

To assist other taxpayers in the future, the Director of Income Tax will publish an (anonymised) summary of successfully completed MAP cases (unless to do so could nevertheless lead to the identification of the taxpayer involved).

## **Making a MAP request**

All MAP requests will have their own factual background, so there is no official form to be completed when making a MAP request to the Guernsey competent authority. However, the following are some types of information that you may need to submit to support your MAP request:

1. Your name, address, and tax reference in both jurisdictions.
2. For transfer pricing cases, the name, address and, if possible, the taxpayer identification number of any related foreign taxpayer involved.
3. The name of the foreign tax administration involved and if possible identification of the regional or local tax administration office that has made, or is proposing to make, the adjustment (if relevant).
4. The DTA article(s) that you believe is/are not being correctly applied, and your interpretation of the application of the article(s).
5. The taxation years or periods involved.
6. The relationship, situation, or structure of the transactions, issues, or related parties involved.
7. A summary of the facts and an analysis of the issues for which competent authority assistance is requested, including any specific issues raised by the tax administrations affecting you and the related amounts (supported by calculations, if applicable).
8. For transfer pricing cases, copies of relevant documentation, if available (where documentation is inordinately voluminous, a description of the documentation prepared in connection with the transactions which are the subject of the MAP request is acceptable as a starting point).
9. A copy of any other relevant competent authority request and the associated documents filed, or to be filed, with the competent authority of the other jurisdiction, including copies of correspondence from the other tax administration, copies of briefs, objections, etc. submitted in response to the action or proposed action of the other tax administration (if applicable, translated copies into English should be provided, although where documentation is voluminous, a description of the documentation may be acceptable as a starting point).

10. A schedule of any known time limitations in the other jurisdiction in respect of the years for which relief is sought.
11. Whether you have filed a notice of objection, notice of appeal, refund claim, or comparable document in the other jurisdiction in relation to the matter and, if so, the outcome, if any.
12. Whether the request for competent authority assistance involves issues that are currently or were previously considered by the tax authorities of the other jurisdiction as part of an advance pricing arrangement, ruling, or similar proceedings.
13. If not already provided, details of any person authorised to act for you in relation to the request.
14. Any other facts that you may consider relevant.
15. A copy of any settlement or agreement reached with the other jurisdiction which may affect the MAP process.
16. Your views on any possible bases on which to resolve the issues (regardless of whether or not these are already been raised with the other competent authority and have been rejected by them).

Ongoing updates on any changes in these matters that occur after the request has been filed, and before it has been completed, would be helpful.

You can make a MAP request to the Guernsey competent authority at:

The Guernsey Competent Authority (MAP)  
Guernsey Income Tax  
PO Box 37  
St Peter Port  
Guernsey  
GY1 3AZ

If you choose to make a MAP request to one of our DTA partners, instead of to the Guernsey competent authority, they may contact the Guernsey competent authority at the same postal address shown above.