

## **Guidelines for requesting Mutual Agreement Procedure (“MAP”) assistance in Guernsey**

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## 1. Introduction

The purpose of this document is to provide guidance through which taxpayers can request assistance, via the Mutual Agreement Procedure (“MAP”), from the Competent Authority in Guernsey, to resolve disputes arising from taxation not in accordance with the provisions of a relevant Double Taxation Agreement/Arrangement (“DTA”).

Copies of all of Guernsey’s current comprehensive and limited DTAs can be accessed online at <https://www.gov.gg/dta>

In this Guidance, references to “income” should be read as including references to “capital” where that is appropriate.

### 1.1 What is a DTA?

A DTA is an official international agreement between (normally) two jurisdictions on how to administer taxation rules when the domestic tax laws of two jurisdictions apply simultaneously to a particular issue or taxpayer. DTAs establish how the jurisdictions intend to eliminate double taxation with respect to taxes on income and on capital without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance. Consequently, DTAs provide a means to resolve some common disputes in the field of international taxation.

The [OECD Model Tax Convention](#) is a model tax treaty/convention which has been developed by the OECD. All of Guernsey’s comprehensive (full) DTAs are modelled on the OECD Model Tax Convention, although some variations do occur, which may differ from agreement to agreement.

Guernsey also has a number of DTAs that are restricted in scope (such as dealing with shipping and aircraft, or personal taxation). These are often referred to as “limited DTAs”. In this document, unless specifically indicated otherwise, or the context requires otherwise, the acronym “DTA” refers to both comprehensive and limited DTAs.

Whilst some countries participate in DTAs which apply to more than two jurisdictions (“multilateral DTAs”), all of Guernsey’s current DTAs are bilateral.

Whilst, in this Guidance, the jurisdictions entering into a DTA are referred to as the “Parties” to the DTA, the terminology used may be different in the text of some DTAs.

### 1.2 Purpose of DTAs

DTAs are intended to eliminate double taxation. To serve this purpose they may provide rules that determine:

- ❖ 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.

### 1.3 Double Taxation

Where a resident of one jurisdiction derives income from sources in another jurisdiction, and both jurisdictions' domestic tax legislation would tax that income, it can cause double taxation. Double taxation can also arise where each jurisdiction considers the taxpayer to be resident in that country under domestic tax laws.

DTAs facilitate the reduction in double taxation, for example, by allocating taxing rights between residence and source jurisdictions on various categories of income, typically by requiring the jurisdiction where the taxpayer resides (the residence jurisdiction) to grant relief where tax is imposed by the jurisdiction in which income arises (the source jurisdiction), through a credit or exemption mechanism, or by eliminating or limiting source jurisdiction taxation.

DTAs further reduce double taxation by establishing criteria for determining an exclusive residency status for taxpayers.

The most common instances of double taxation disputes concern residency or permanent establishment status, or the characterisation of particular items of income and their coverage under particular provisions of a DTA.

“Economic double taxation” is double taxation that arises when more than one jurisdiction includes the same income in the tax base, when the income is in the hands of different taxpayers. Transfer pricing cases are an example of circumstances that may lead to economic double taxation.

Where a DTA exists between two jurisdictions, the majority of occurrences of double taxation are dealt with automatically via the application of the provisions of the relevant DTAs. However, occasionally it may transpire that taxpayers are still taxed twice, or the taxpayer may consider that their tax affairs have not been dealt with correctly under the terms of a DTA, by one, or both of the Parties. Consequently, Guernsey's DTAs include MAP provisions aimed at resolving any disputes arising from double taxation, as well as any potential inconsistencies in the interpretation or application of a DTA.

## 2. What is a Mutual Agreement Procedure (MAP)?

All of Guernsey's DTAs contain a MAP provision that provides a remedy for a taxpayer (either private individuals or entities) that considers that the actions of one or both of the Parties result, or will result, in taxation of the taxpayer not in accordance with the provisions of the applicable DTA.

If there is no DTA between Guernsey and the other jurisdiction, there can be no MAP.

The MAP article is based on Article 25 of the [OECD Model Tax Convention](#). This empowers Guernsey to consider the taxpayer's case and to resolve any double taxation disputes or any inconsistencies in the interpretation and application of the applicable DTA by mutual agreement with the other Party. This is a process of consultation, not litigation, between the two Competent Authorities (see below).

Guernsey is one of a number of jurisdictions that signed the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting ("MLI") in June 2017, in order to implement tax treaty measures as part of the OECD Base Erosion and Profit Shifting ("BEPS") project. One of the provisions of the MLI (which modifies certain DTAs – see below) allows taxpayers to approach the Competent Authority of either jurisdiction to request MAP assistance, if this was not already provided for in the DTA. The MLI entered into force in respect of Guernsey on 1 June 2019.

It should be noted that this new rule in the MLI will only apply in respect of treaties which existed when the MLI was signed, if those treaties are specifically covered by the MLI, and only then once Guernsey's treaty partners have also ratified the MLI. Some DTAs are covered by the MLI but will not be revised by the MLI to allow an approach to be made to either Party, i.e. the DTAs with Monaco and Singapore (this is because Monaco and Singapore made a Reservation in relation to this part of the MLI) – see also [section 4](#). Some DTAs not covered by the MLI have, nevertheless, been revised bilaterally to include the new provision. New DTAs signed after the MLI was signed, in 2017, are likely to contain this new rule in the relevant MAP Article.

Taxpayers should consult the relevant DTA and the relevant MLI provisions (following ratification by both Parties), and any bilaterally agreed revisions to a DTA, when making a MAP request. Synthesised texts, showing how the MLI modifies covered DTAs, and copies of bilaterally agreed amending Protocols, can be found on the [States of Guernsey website](#) as and when these are agreed/signed with the other Party.

In a MAP context, "Competent Authority" is a term used in tax agreements to identify the person to whom issues relating to the agreement can be addressed.

The Director of the Revenue Service has statutory responsibility for the care and management of the Income Tax Law and is the Competent Authority for Guernsey. The Director may delegate responsibility for dealing with MAP requests to other officers at the

Guernsey Revenue Service, in which case they will be a Delegated Competent Authority for that purpose.

The Guernsey Revenue Service publishes contact details for the Guernsey Competent Authority and any Delegated Competent Authorities on the States of Guernsey [website](#).

For the avoidance of doubt, there is nothing in Guernsey's legislation or practice that would prevent it from being able to enter into MAP agreements of a general nature, even in the absence of words in the relevant tax treaty that specifically reference the competent authorities endeavouring to resolve, by mutual agreement, any difficulties or doubts arising as to the interpretation or application of the tax treaty (provided that the other party to the treaty could also do so, and that the decision reached was not ultra vires Guernsey's domestic law). Accordingly, a MAP request would not automatically be denied by Guernsey simply because these words do not appear in a DTA.

### 3. Making a MAP Request

In the event that a taxpayer considers that the actions of one or both Parties' tax administrations has, or will, result in taxation not in accordance with a Guernsey DTA, the taxpayer may request Competent Authority assistance under the MAP article.

In most cases, taxpayers would normally approach the Competent Authority of their jurisdiction of residence to request relief under a DTA. However, see [section 2](#) above regarding the ability to make a request of either Party.

#### 3.1 Example Scenarios that may require Competent Authority Assistance

The following provide some examples of situations where the MAP process may apply:

- ❖ 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 applicable 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 examples are for illustration purposes only and are not intended to be an exhaustive list of all the circumstances in which a MAP may apply.

Furthermore, simply raising an issue with one of the Competent Authorities may result in the matter being resolved satisfactorily (e.g. if the issue arose due to an error or mistake, or a misunderstanding of the facts). The MAP is intended for use when no such solution is reached to the satisfaction of the person affected.

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 the Revenue Service, if using the MAP procedure is otherwise valid under the relevant DTA.

#### **4. Eligibility for MAP Requests in Guernsey**

If you are a Guernsey resident, or otherwise consider that you are entitled to benefits under a DTA, and you 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.

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.

The Guernsey Competent Authority will consider accepting or denying a MAP request based on the content of the taxpayer's submission. It is, therefore, important that the taxpayer or their authorised representative ensure that the minimum required information and any other relevant information is submitted.

A MAP can be requested if the taxpayer is of the view that actions of one or both of the Parties will result in taxation not in accordance with the DTA. The MAP request, however, must establish that this taxation appears as a risk which is not merely possible but probable. Further, this view must be reasonable and based on facts.

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.

If your MAP request is validly made, is considered to be justified, and is not a matter that the Guernsey Competent Authority can agree can be dealt with by them 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.

You may be able to present your case to the Competent Authority of the other Party, if you prefer (see [section 2](#) above). If they accept your request, they will then discuss the matter with the Guernsey Competent Authority.

Taxpayers should refer to the text of the particular MAP article in the applicable DTA (as modified by the MLI, or amending Protocol, if appropriate) to determine their entitlement to present a request to a particular Competent Authority.

For the avoidance of doubt, where a DTA has not currently been modified to enable you to make a MAP request to either competent authority, then on receipt of such a MAP request the Guernsey Competent Authority will consider the MAP request on its own merits. If the Guernsey Competent Authority does not consider the MAP request to be justified the

Guernsey Competent Authority will implement a bilateral notification process with the Competent Authority of the other party which will allow the other Party to provide its views on the case. This notification process will utilise the spontaneous exchange of information provisions contained in the DTA, or other relevant tax agreement. The information exchanged will be the minimum information necessary to enable the Competent Authority of the other party to identify you (as the taxpayer), together with a summary of details identified in the MAP request, in order to enable the competent authority in the other party to give consideration to the matter in hand.

## 5. Time Limits for Requesting a MAP

A MAP request will be denied by the Guernsey Competent Authority, if the MAP request is not submitted within the time limits provided for in the DTA or in terms of the domestic tax law, if applicable.

The majority of Guernsey's DTAs follow Article 25 of the Model Tax Convention and 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, which is not covered by the MLI, originally provided for a 2 year time limit, although this has been extended to 3 years in a Protocol signed in June 2022.

Taxpayers should ensure that they consult the Mutual Agreement Procedure Article in the relevant DTA at an early stage to ensure that they submit a request for MAP assistance within the specified time limit.

Copies of all of Guernsey's current comprehensive and limited DTAs, and any amending Protocols, can be accessed online at <https://www.gov.gg/dta>.

For the avoidance of doubt, the Guernsey Competent Authority recognises that, in certain cases, a MAP request in respect of a specific adjustment to income may present recurring issues which will also be relevant in previous or subsequent tax years for which the relevant tax return has been submitted. It is, therefore, possible, in such cases, and after an initial tax assessment, for you to make a MAP request covering multiple years (with the same recurring issues), where the relevant facts and circumstances are the same. MAP requests of this nature do, however, remain subject to the time limits detailed immediately above (i.e. such procedures would not allow MAP requests that would be time-barred under paragraph 1 of Article 25 of the Model Tax Convention – see also [section 7.7.6](#)).

## 6. Overview of the MAP process

The general Guernsey MAP process is as follows:

- ❖ A taxpayer resident in Guernsey or in one of Guernsey's DTA partners gives notice that they consider that an action by both or one of the jurisdictions has resulted (or will result) in double taxation which is not in accordance with the provisions of the applicable DTA, and makes a MAP request (within the prescribed time limit – see [section 5](#) above).
- ❖ The MAP request contains relevant information and documentation (see [section 7.2](#)) including confirmation that a request has been sent simultaneously to the other Party's Competent Authority, if applicable.
- ❖ The Guernsey Competent Authority will send an acknowledgement confirming that the taxpayer's MAP request has been received and will be considered.
- ❖ Following preliminary review, the Guernsey Competent Authority will advise the taxpayer whether the request for assistance has been accepted or denied and, if denied, the reasons.
- ❖ Where accepted, the Guernsey Competent Authority may first determine if the MAP can be resolved unilaterally. If the Guernsey Competent Authority cannot resolve the case unilaterally, it will initiate a MAP request with the Competent Authority of the applicable jurisdiction to which the MAP pertains (see [section 4](#) above in the case of a MAP request requiring a bilateral notification process).
- ❖ The Guernsey Competent Authority and the other relevant Competent Authority will attempt to reach an agreement as to how the DTA should be applied in the taxpayer's case, ensuring that both the Competent Authorities apply the same interpretation of the DTA, whenever possible.
- ❖ If an agreement is reached, the Guernsey Competent Authority will notify the taxpayer of the outcome of the MAP request (see also sections [7.5.2.1](#) and [7.5.2.2](#)).
- ❖ Implementation of any mutual agreement (e.g. appropriate adjustments to the tax assessment) will be made, and
- ❖ The Guernsey Competent Authority will notify the other Competent Authority and the taxpayer that the MAP was implemented.

## **7. The MAP Process**

### **7.1 How to Submit a MAP Request in Guernsey**

In Guernsey, MAP cases are initiated through a taxpayer's request for Competent Authority assistance. A taxpayer may elect to submit a MAP request to the Guernsey Competent Authority either in hard copy or electronically.

MAP requests can be posted to:

Guernsey Competent Authority (MAP Request)  
International Team  
States of Guernsey Revenue Service  
PO Box 37  
St. Peter Port  
Guernsey, GY1 3AZ

Electronic MAP requests should be addressed to the Guernsey Competent Authority and sent to the dedicated email address [eoigov@gg](mailto:eoigov@gg) with the subject title of "MAP Request".

The MAP request must be submitted in English and contain the minimum information required (see [section 7.2](#)). An English translation may be required of any relevant documents which are in a foreign language.

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

For multiple MAP requests, separate letters of request, pertinent to each case, and/or the relevant DTA, must be submitted.

To assist a taxpayer who wishes to simultaneously send their MAP request to the applicable partner jurisdictions, MAP profiles with the relevant contact details are publicly available on the [OECD website](#).

### **7.2 Minimum Information Requirements for a Guernsey MAP Request**

In order to deal with a MAP request in as expeditious a manner as possible, the Guernsey Competent Authority requires sufficient detail to analyse, understand, and ultimately prepare to discuss the issue with both the taxpayer (if necessary) and the other Competent Authority.

As each MAP case will be based on its own factual background, there is no prescribed format or official form to complete when making a MAP request to the Guernsey Competent Authority.

Whilst there is no prescribed format, in order to assist taxpayers when making a MAP request, the following list details the minimum information a taxpayer should provide, where applicable, when making a MAP request:

❖ **Taxpayer Details**

- Full name, date of birth and address of the individual or full name, registration number (if applicable) and address of the company/other entity.
- The individual's/entity's income tax reference, for both jurisdictions, if applicable.
- For requests being submitted by a representative, a form of authority from the taxpayer authorising the agent's ability to act on the taxpayer's behalf (if no pre-existing form of authority is already in place).
- Contact details for the taxpayer and/or representative submitting the MAP request.

❖ **The Basis of the MAP request**

- Specific DTA applicable to the request.
- The DTA Article(s) that you consider is/are not being correctly applied.
- Confirmation that the request is submitted within the specified time limit under the MAP Article or domestic time limits for filing objections (see [section 5](#)).

❖ **Facts of the case**

- Summary of all facts of the case relevant to the issue.
- A summary of the relationship, situation or structure of the transactions, issues or related parties involved. A group organogram would be useful in complex cases.
- Documentation to support the above information including copies of correspondence, agreements or contracts, tax certificates, receipts etc.
- Amounts involved (in both pounds sterling and any foreign currency, including any exchange rates used).

❖ **Analysis of the issue(s) requested to be resolved via MAP:**

- Analysis of the issue(s) involved, including your interpretation of the application of the specific DTA provision(s), to support the basis for the MAP request.
- Your views on any possible bases on which to resolve the issues.
- Supporting documents for your analysis, for example, documentation required under transfer pricing legislation or published guidance, copies of tax assessments, relevant correspondence etc.
- A schedule or identification of the domestic and DTA time limits in the relevant jurisdictions in respect of the years for which relief is sought (in the case of multiple taxpayers, a schedule for each should be provided).
- Whilst the above lists the minimum information required, you are encouraged to provide any other facts that you consider may be relevant.

❖ **Information concerning the other Competent Authority relevant to the MAP request**

- The name of the foreign tax administration involved and, if possible, identification/contact details of the regional or local tax administration office that has made, or is proposing to make, the adjustment (if relevant).
- A copy of any settlement or agreement reached with the other jurisdiction which may affect the MAP process.
- A statement confirming whether or not you have submitted your MAP request to the other applicable Competent Authority. If so, you should provide:
  - The date of such submission.
  - The name and the designation of the person or the office to which the MAP request was submitted.
  - A copy of the submission and the associated documents filed, or to be filed, (unless identical to the request submitted to Guernsey), 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.
  - Whether the issue(s) involved were previously dealt with e.g. in an advance ruling, advance pricing agreement (“APA”), settlement agreement or any tax tribunal or court. If so, please provide a copy of these rulings, agreements or decisions.

❖ **Other Confirmatory Statements**

- A statement confirming if you or a predecessor has made a prior request to either Competent Authority on the same or a related issue.
- A statement indicating whether you have filed a notice of objection, notice of appeal, refund claim, or comparable document in either Guernsey or the relevant other jurisdiction.
- A statement confirming that all information and documentation provided in the MAP request is accurate.
- A statement confirming that you will assist the Guernsey Competent Authority in its endeavours to resolve the MAP request by furnishing any other information or documentation required in a timely manner.

❖ **Additional Information in any MAP case concerning transfer pricing**

- The names, addresses, contact details and, if possible, the taxpayer identification number of any foreign taxpayer involved.
- Copies of relevant documentation, if available (where documentation is 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).

Where a MAP request does not contain the minimum amount of information, it may not be regarded as a MAP request by the Guernsey Competent Authority i.e. it may not be regarded as submitted for the purposes of satisfying the time limit requirements. In this event, Guernsey will notify the taxpayer in writing to inform them what information or documentation is missing and that the MAP request cannot be processed without the submission of the outstanding information or documentation.

There may be a delay in the processing of your MAP request where complete and accurate information is not provided and further requests for information need to be made.

A MAP request will not be regarded as made until all the information as set out above has been provided by the taxpayer.

### **7.3 Timeframes in relation to Additional Information Requests**

It may be necessary for the Competent Authority to request additional information in relation to a taxpayer's MAP request. These requests may be either because the minimum information required has not been provided, or additional information is needed in order to process a valid MAP request.

The Guernsey Competent Authority expects that all requests for further information will be responded to as completely and quickly as possible to prevent any undue delay in the processing of the request.

In cases where a taxpayer has been notified that the minimum required information has not been provided, or additional information is required, the taxpayer will normally be given 60 days in which to provide the information and documents. Where it has not been received within this timeframe, and no requests for an additional period of time to provide material have been agreed in advance, the Guernsey Competent Authority will consider that the taxpayer has withdrawn the request and will notify the taxpayer (and the other Competent Authority, if relevant).

Upon request by a taxpayer, the Guernsey Competent Authority may permit additional time to submit outstanding material, agreed on a case by case basis.

### **7.4 Acceptance or Denial of a MAP request**

Upon receipt of a MAP request, the Guernsey Competent Authority will send an acknowledgment (within 5 working days) and will endeavour to notify the taxpayer in writing, within 30 days, whether their request for Competent Authority assistance has been accepted or declined.

If the Guernsey Competent Authority does not consider the request to be valid or justified, they will explain to the taxpayer the reason why that is considered to be so. The taxpayer will be given the opportunity of clarifying any misunderstandings which may have led to an erroneous judgment, or the opportunity to revise the MAP request submission to make it valid, if appropriate.

It is possible that the provisions of the relevant DTA may have changed since it was originally signed. A taxpayer will be advised if any changes affect a MAP request submitted. If they do, the taxpayer will be asked if they wish to continue to pursue their request or amend it, as appropriate.

## **7.5 Resolution of a MAP Request**

When a valid MAP request is received by the Guernsey Competent Authority, the potential outcomes in a MAP case are:

- unilateral resolution by Guernsey;
- Competent Authority agreement for full or partial elimination of double taxation;
- no Competent Authority resolution is reached;
- the request is withdrawn by the taxpayer.

Guernsey is committed to seeking to resolve MAP cases within an average timeframe of two years of receipt of the complete MAP request.

It must be acknowledged that this timeframe is dependent on a number of factors such as the complexity of the case, the co-operation of the taxpayer and the other Competent Authority, and the number of rounds of negotiations required, where applicable (see also [section 8](#) below).

### **7.5.1 Unilateral Resolution by Guernsey**

The Guernsey Competent Authority will endeavour to first attempt to resolve the matter unilaterally, as appropriate. During this process, it is possible that there will be further information requests and taxpayers are expected to cooperate fully with the Revenue Service by providing the requested information without delay when requested.

### **7.5.2 Bilateral Negotiation**

If the Guernsey Competent Authority is not itself able to arrive at a satisfactory solution, it will engage the other Competent Authority in order to set in motion the second, bilateral, stage of the MAP process.

Once the Guernsey Competent Authority is engaged with another Competent Authority regarding a MAP request, the merits (and, if applicable, the deficiencies) of the case or issue will be discussed with the intention of reaching a mutually acceptable agreement to resolve the case.

It should be noted that MAP discussions between the Guernsey Competent Authority and the other Competent Authority are a government-to-government process. The involvement of a taxpayer in the MAP is generally limited to presenting its views to both Competent Authorities and providing the relevant information. Taxpayers are not involved in the actual discussions between the Competent Authorities. However, where appropriate, and practical, taxpayers may be invited to make a presentation before the Competent Authorities to ensure a common understanding of the facts of a particular case.

The Guernsey Competent Authority will endeavour to tell you how it will deal with your request within three months of receiving it. You will be notified of how your request is progressing on an on-going basis, or as and when significant developments occur.

#### **7.5.2.1 Procedure when an agreement is reached**

Where an agreement is reached between the Competent Authorities, the Guernsey Competent Authority will notify the taxpayer in writing of the decision and summary of the result. Where possible this notification will be made to the taxpayer within 30 days of the agreement being reached.

As part of this notification process, the Guernsey Revenue Service will request that the taxpayer confirm in writing within 30 days of this notification whether or not they accept the mutual agreement that has been reached.

In the event that the taxpayer rejects the mutual agreement reached between the Competent Authorities, the taxpayer can withdraw from the MAP process and pursue any available domestic remedies.

If the taxpayer confirms in writing its acceptance of the mutual agreement, or fails to respond, the Guernsey Revenue Service will give effect to the mutual agreement and seek to ensure its implementation without delay in order that the relevant relief (and any consequent repayment) is obtained by the taxpayer promptly.

Section 172(1) of the Income Tax Law states:

*“If the States by Resolution declare that arrangements specified in the Resolution have been made with the government of any other territory with a view to affording relief from double taxation in relation to income tax and any tax of a similar character imposed by the laws of that territory, and that it is expedient that those arrangements should have effect, the*

*arrangements shall have effect in relation to income tax notwithstanding anything in any enactment”.*

All DTAs (i.e. both comprehensive and limited DTAs) are subject to approval by the States under section 172(1).

The Director of the Revenue Service may, therefore, implement any agreement reached in a MAP case notwithstanding that the time limits in Guernsey’s Income Tax Law may otherwise not have permitted this.

#### **7.5.2.2 Procedure when an agreement is not reached**

On occasion, Competent Authorities are unable to come to an agreement. Whilst Guernsey and the other jurisdiction will always use their best endeavours to reach an agreement, a MAP article in Guernsey’s DTAs does not compel Guernsey and the other jurisdiction to actually reach an agreement in order to resolve the tax dispute.

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.

In the event that the Guernsey Competent Authority is unable to reach agreement with the Competent Authority of the foreign tax administration (and in the absence of mandatory binding Arbitration – see [section 7.5.2.3](#)), the Guernsey Competent Authority will set out in writing to the taxpayer why agreement could not be reached. As a general rule, this notification will be sent within 30 days of the conclusion of the Competent Authority discussions.

#### **7.5.2.3 Arbitration**

As explained above, the Guernsey Competent Authority and the other contracting Competent Authorities will always endeavour to resolve cases with the objective of eliminating double taxation. However, it may not always be possible for the Competent Authorities to reach agreement, in which case arbitration may be available.

Some of Guernsey’s DTAs address the possibility of the Competent Authorities being unable to reach a decision in a MAP request by providing an arbitration procedure. The relevant DTAs are those with Estonia, Hong Kong, the Isle of Man, Jersey, Liechtenstein, Luxembourg, the Netherlands (a limited DTA) and the United Kingdom. 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 by a taxpayer if a MAP request cannot be resolved by the Competent Authorities, including a failure to agree within a reasonable period.

Guernsey has initiated discussion with some of its DTA partners to agree the specific procedures to be used when a case is considered for arbitration. To date, a memorandum has been agreed and signed with both the United Kingdom Competent Authority and the Luxembourg Competent Authority (which can be accessed at <https://www.gov.gg/dta>).

### **7.5.3 MAP Request Withdrawn by the Taxpayer**

A taxpayer can withdraw a MAP request made to the Guernsey Competent Authority at any time. In the event a taxpayer wishes to withdraw a request, notification should be provided in writing as soon as possible after this decision has been made by the taxpayer.

Where negotiations have already commenced with the Competent Authority of a treaty partner, the Guernsey Competent Authority will notify them that the MAP request has been withdrawn at the request of the taxpayer.

The taxpayer will also be sent an acknowledgment that the MAP has been terminated, at their request.

### **7.6 Interaction with Domestic Remedies**

MAP is an administrative procedure, as provided for in Guernsey's DTAs. As such a taxpayer may request MAP assistance irrespective of the remedies provided by Guernsey's domestic legislation.

Whilst it is possible for a taxpayer to request MAP assistance from the Guernsey Competent Authority in situations where a decision has been rendered by the Guernsey Revenue Service Tribunal, Guernsey Magistrates Court, Guernsey Royal Court or the Court of Appeal, it must be noted that the Guernsey Competent Authority cannot deviate in the MAP from a decision by the Guernsey Revenue Service Tribunal or the highest court in which the matter is heard.

It is also possible for a taxpayer to submit a request for MAP assistance while judicial or administrative proceedings are ongoing. However, in practice, the Guernsey Competent Authority would not envisage the parallel undertaking of a MAP where a taxpayer is simultaneously pursuing judicial or administrative remedies.

In the event of such cases, the Guernsey Competent Authority will generally request that the taxpayer agrees to the suspension of its administrative or judicial remedies pending the outcome of the MAP. If the taxpayer does not agree to suspend the administrative or judicial remedies, the Competent Authority may delay the MAP process pending the outcome of the administrative or judicial proceedings.

Once a MAP is completed, and if the Competent Authorities cannot reach agreement, or if the taxpayer rejects the agreement reached between the Competent Authorities, the taxpayer can then pursue any available domestic administrative or judicial remedies.

## **7.7 Other Relevant Guidance**

### **7.7.1 Suspension of Tax and Payment of Additional Tax**

Under Guernsey's domestic legislation, there is no automatic suspension of tax collection during the MAP process. However, where a taxpayer considers that tax charged is likely to be excessive and/or not due, they may submit a request to the Revenue Service to suspend the payment of the whole or part of the disputed sums involved, pending resolution of the MAP (provided that the taxpayer has appealed against the relevant assessment(s) and has paid, or agrees to pay, any undisputed amount of tax due).

Whether or not tax is suspended is at the discretion of the Director but, in practice, it is exceptional for the Director to reject an application for suspension which is reasonable based on the facts (and a statutory right of appeal exists, in the case of an interim assessment, if the Director did so – see section 76 of the Income Tax Law).

In the event that any part of the suspended tax is subsequently agreed to be properly due and payable, the outstanding sum may attract late payment surcharges in accordance with the Income Tax Law.

In the exceptional situation that penalties may become payable in respect of an adjustment to be made in a MAP case, the penalties can be mitigated, based on the circumstances in which they arise. In the case of a MAP procedure, therefore, the facts of the case would be taken into account.

If additional tax becomes payable, after a MAP adjustment is made, the tax due will be payable in accordance with the Income Tax Law. The due date(s) for payment will be detailed in the statement that accompanies the relevant assessment(s). If difficulties are encountered in making payment in full by the due date(s), contact should be made with the Revenue Service Debt Management Section, in order to discuss the payment options.

### **7.7.2 Access to MAP in Transfer Pricing Cases (Taxpayer-initiated foreign adjustments)**

The Guernsey Competent Authority is willing to accept MAP requests for consideration with regards to transfer pricing cases and make corresponding adjustments, as applicable.

For the avoidance of doubt, this access to MAP is possible in Guernsey, regardless of whether or not the applicable DTA includes the equivalent of Article 9(2) of the Model Tax

Convention (although all of Guernsey's current comprehensive DTAs do already contain this, or a variant).

### **7.7.3 Audit Settlements**

Guernsey does not have an independent audit settlement process, over and above the existing tax assessment process under Guernsey's domestic tax legislation. Consequently, it would only be possible for Guernsey to consider a MAP request related to an audit settlement where there had been an audit settlement between a taxpayer and a tax authority in another jurisdiction. The existence of an audit settlement between a taxpayer and another tax authority would not, in and of itself, preclude access to MAP in Guernsey.

### **7.7.4 Statutory Dispute Settlement/Resolution Process**

If a taxpayer disagrees with an assessment, penalty, direction or order issued by the Director of the Revenue Service, they may lodge an appeal.

Upon receipt of an appeal, the Revenue Service will usually attempt to resolve the matter with the taxpayer in the first instance. If an agreement cannot be reached the case will be referred to the Guernsey Revenue Service Tribunal for a hearing.

The Guernsey Revenue Service Tribunal is independent from the Revenue Service and will make a determination of the matter following a hearing. The Income Tax Law provides for some circumstances in which decisions of the Tribunal can be appealed to the courts.

A taxpayer is not precluded from access to MAP where a matter has been determined by the Guernsey Revenue Service Tribunal, but the Guernsey Competent Authority cannot deviate in a MAP from a decision by the Guernsey Revenue Service Tribunal or the highest court in which the matter is heard (see [section 7.6](#)).

### **7.7.5 Access to MAP in relation to the Application of Anti-abuse Provisions**

There is no restriction prohibiting a taxpayer's access to MAP for cases where a treaty-abuse provision applies or where there is a disagreement between the taxpayer and the tax authorities as to whether the application of a domestic law anti-abuse provision is in conflict with the provisions of the relevant DTA.

### **7.7.6 Access to MAP for Multiple Years**

Taxpayers may submit MAP requests that span multiple tax years. However, note that only year(s) that fall within the relevant time limits will be considered by the Guernsey Competent Authority (see also [section 5](#)).

#### **7.7.7 Multilateral MAPs**

Guernsey does not have any DTAs which permit multilateral MAPs at this time. Notwithstanding this fact, in the event that a MAP issue involves more than two tax jurisdictions, the Guernsey Competent Authority will consider entering into a series of bilateral MAPs as an alternative means to resolving such a multilateral situation, if Guernsey has DTAs with the relevant jurisdictions.

#### **7.7.8 Late Payment surcharges and/or Penalties in Guernsey**

It is possible that late payment surcharges and/or penalties may have arisen/been imposed in Guernsey, in connection with a matter that is subsequently subject to a MAP request. If, taking into account the outcome of consideration of the request, there is an adjustment which results in the surcharges and/or penalties appearing to be excessive (i.e. more than may have been the case had the adjustment been made immediately prior to the surcharges and/or penalties arising/being imposed), the Director will consider the extent to which such surcharges and/or penalties should be reduced, to ensure that an equitable outcome is reached, whilst having regard to the provisions of the Income Tax Law.

#### **7.7.9 Aspects Not Covered by MAP**

No relief will be available in Guernsey under MAP for:

- ❖ Interest and penalties imposed by another jurisdiction; or
- ❖ Secondary/repatriation of profits adjustments implemented under the laws of another jurisdiction.

## **8. Timescales for the Conclusion of a MAP case**

In practice, the likely timeframe to complete a MAP case will depend on the complexity of the matter and the cooperation and assistance given in reaching a resolution by the taxpayer and the Competent Authority of the other jurisdiction. However, as a general guideline, the Guernsey Competent Authority aims to conclude MAP requests in as short a timeframe as possible, and within two years of them being initiated by a taxpayer.

In the event that the Guernsey Competent Authority anticipates that resolution of a MAP request may exceed the two year timeframe, they will undertake a review of the case to ensure the efficient completion of the case, taking into account the reason for the delay, (e.g. due to an unusually complex case or a taxpayer requesting extended periods of time to submit required documentation, etc). The outcome of this review will be shared with the taxpayer and, where relevant, the other Competent Authority, so that all parties to the request are aware of the reasons for the delay and, if possible, the new anticipated date for resolution of the matter.

## 9. Undertakings

In the resolution of MAP requests, the Guernsey Competent Authority undertakes that they will process the request as expeditiously as the circumstances permit and 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.

To facilitate this, the Director of the Revenue Service will delegate responsibility for overseeing the handling of a MAP request to an officer of the Revenue Service who was not involved in the making of the original decision to which the request relates. That person will determine the validity of a MAP request; participate in the discussions of the case with the Competent Authority of the other jurisdiction; will carry out the review referred to in [section 8](#) above; and will ensure that acknowledgments, and other notifications/actions referred to in this Guidance, are completed.

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 when interpreting the provisions of a DTA (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 a taxpayer that they 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 (and in any event within the timeframes as specified in [section 7.3](#)).

## **10. Confidentiality of MAP requests**

Section 205A of the Income Tax Law, contains strict confidentiality provisions, which requires that all individuals who come into contact with Revenue Service records will not disclose them further, unless they are entitled to do so, by law . This ensures a duty to preserve the secrecy of confidential taxpayer information, and to only disclose such information to the extent permitted by law, including any international tax agreements.

In accordance with the Multilateral Convention on Mutual Administrative Assistance in Tax Matters (“the MAC”), Tax Information Exchange Agreements (“TIEAs) and DTAs entered into by Guernsey, information exchanged is required to be kept secret (in line with Article 22 of the MAC, Article 26 of the OECD Model Tax Convention and Article 8 of the OECD Model TIEA). Further, the agreements generally provide that exchanged information may only be disclosed to and used by courts, administrative bodies and others involved in and for the purposes of assessment, collection or administration, enforcement or prosecution, or determination of appeals concerning the taxes covered by the agreement.

Where appropriate, MAP data may be used for economic and statistical analysis, for compiling anonymised data for the purposes of any questionnaires/reports that may be used by external parties (e.g. for the Policy & Resources Statistical Unit, the OECD, etc).

Guernsey is cognisant of appropriate use and confidentiality provisions concerning MAP data. In order to prevent the risk of an underlying taxpayer being identified, the Director has a de minimis threshold of not reporting any data for the purposes of any external reports or reviews where less than five MAP requests are received in any tax year. Notwithstanding this, where the minimum threshold is achieved, data may be further aggregated to ensure confidentiality requirements are not breached.

To assist other taxpayers in the future, the Director of the Revenue Service will publish as a Statement of Practice, an anonymised summary of successfully completed MAP cases, unless to do so could lead to the identification of the taxpayer(s) involved.

## **Appendix 1: Glossary of Terms**

(Note: This glossary is provided for ease of reading of this document only and has no binding effect. The definition of terms should at all times be considered in the context of the wording of the relevant DTA.)

### **Advance pricing arrangements (“APA”)**

An arrangement that determines, in advance of controlled transactions, an appropriate set of criteria (e.g. method, comparables and appropriate adjustments thereto, critical assumptions as to future events) for the determination of transfer pricing for those transactions over a fixed period of time. An APA may be unilateral involving one tax administration and a taxpayer or multilateral involving the agreement of two or more tax administrations.

At present, Guernsey does not have an APA regime.

### **Anti-abuse rules / anti-avoidance laws**

Domestic taxation laws or provisions of a DTA that are intended to prevent taxpayers from avoiding tax or abusing tax laws for the sole purpose of obtaining a reduction, avoidance or deferral of tax.

### **Associated enterprises**

Two enterprises are associated enterprises with respect to each other if the conditions set out in the relevant DTA are met.

### **Competent Authority**

A term used in tax agreements to identify the person who represents the jurisdiction in the implementation of the treaty, as defined (generally) under Article 3 of a tax treaty.

The Competent Authority has certain specific functions under the treaty, including acting as a contact point for both taxpayers and the other Competent Authority for MAP.

### **Correlative adjustment**

A term used in the transfer pricing context. An adjustment that creates an increase or decrease in the tax imposed on one member of the group of controlled taxpayers correlating to the “primary adjustment” made in respect of another member of the same group. The adjustment may be to the income of the group member or to an allowance of relief under a foreign tax credit or exemption mechanism. This term is generally seen as

interchangeable with the term “corresponding adjustment”, although when speaking of a particular monetary adjustment, some prefer to refer to “correlative adjustments”.

### **Corresponding adjustment**

An adjustment to the tax liability of the associated enterprise in a second tax jurisdiction made by the tax administration of that jurisdiction, corresponding to a primary adjustment made by the tax administration in a first tax jurisdiction, so that the allocation of profits by the two jurisdictions is consistent.

### **Double taxation**

“Double taxation” occurs where the same legal person is taxed twice on the same income or other taxable item by more than one jurisdiction. A common situation is where a source jurisdiction taxes a payment as it flows to a non-resident person (e.g. by dividend or interest withholding tax) and the jurisdiction of residence of the recipient also taxes that person on the same item as part of their worldwide income. The division of taxing rights in the OECD Model Tax Convention, when combined with the effect of Article 23, is designed to prevent such double taxation as far as is possible.

### **Dual Residence**

The situation wherein a person, being either an individual or a company, is determined as being “resident” under the domestic tax laws of both the Parties to a DTA. This would give rise to the possibility of double taxation – both Parties taxing the person as their resident. The provisions of Article 4(2) and Article 4(3) of the OECD Model Tax Convention are designed to solve such situations by treating the person as resident – for purposes of the treaty – of only one of the Parties.

### **Economic double taxation**

“Economic double taxation” is where two different legal persons are taxed on the same income or other taxable item by more than one jurisdiction. This may occur, for example where two jurisdictions take different views of the profits made in transactions between a subsidiary resident in one, in its transactions with a parent company in the other, so that at least some part of the profits on the transaction are taxed in both jurisdictions. Article 9 of the OECD Model Tax Convention seeks to address aspects of this sort of double taxation of related entities.

## **Foreign Tax Credit**

A credit given in calculating tax due in the jurisdiction of residence for tax suffered in other jurisdictions (“foreign tax”).

The DTA will normally provide the method for calculating the amount of foreign tax to be deducted from the amount of local tax otherwise to be paid. This avoids double taxation where, as is often the case, a tax treaty allows both the source and residence jurisdiction some taxing rights.

## **Income Tax Law**

The principal Guernsey tax law which is the Income Tax (Guernsey) Law, 1975, as amended.

## **Independent enterprises**

Two enterprises are independent enterprises with respect to each other if they are not associated enterprises.

## **OECD Model Tax Convention**

The Model Tax Convention on Income and Capital published by the OECD, as amended from time to time.

The OECD Model Tax Convention includes Commentaries designed to assist in interpretation of the articles of the Model. The OECD Model Tax Convention serves as a model for the negotiation of bilateral tax treaties between jurisdictions.

## **Permanent establishment (“PE”)**

A term defined in Article 5 of the OECD Model Tax Convention and used to determine whether the business profits of a resident enterprise of a treaty partner may be taxed under Article 7 in the other treaty partner. As Article 7 makes clear, the amount of business profits so taxable is the amount attributable under that Article to the permanent establishment. The PE test is broadly a test of whether there is the minimum economic connection necessary to justify source jurisdiction taxation of such business profits under the DTA.

There are generally two aspects required for there to be a PE, a relationship to a particular place (the geographical aspect) and a presence for a particular point of time (the temporal aspect).

## **Primary adjustment**

An adjustment that a tax administration in a jurisdiction makes to a company's taxable profits as a result of applying the arm's length principle to transactions involving an associated enterprise in another tax jurisdiction.

### **Repatriation**

In the transfer pricing context, this term refers to the act by which an enterprise that has been party to a controlled transaction with an associated enterprise and has been found, in accordance with a transfer pricing adjustment, to have derived as a result of that transaction an amount of income that exceeds an arm's length amount, returns the excess funds to its associated enterprise.

There are currently no such rules in Guernsey's Income Tax Law.

### **Residence Jurisdiction**

The residence jurisdiction is the place where a person is resident under a DTA at the relevant time. In international tax law, this is a basis for taxation of the global income of the resident.

### **Secondary adjustment**

An adjustment that arises from imposing tax on a secondary transaction in transfer pricing cases.

### **Secondary transaction**

A notional transaction that some jurisdictions assert under their domestic transfer pricing legislation after having proposed a primary adjustment in order to make the actual allocation of profits consistent with the primary adjustment. Secondary transactions may take the form of constructive dividends (that is items treated as though they are dividends, even though they would not normally be regarded as such), constructive equity contributions, or constructive loans.

There are currently no such rules in Guernsey's Income Tax Law.

## Source jurisdiction

The jurisdiction where, for the purposes of a DTA, a taxable amount is regarded as arising. As rules in domestic law about where an amount arises differ (e.g. some might look to where the profits that become a dividend are made as the source of a dividend, whereas others may look to the jurisdiction from which the dividend is paid), the OECD Model Tax Convention often provides implied or specific rules.

## Source Tax

Tax on an item of income imposed in the source jurisdiction from where that income is derived. Many Articles of the OECD Model Tax Convention provide for an exemption from, or a reduction of, such "source" tax on certain items of income.

## Transfer pricing

The terms and conditions applying to transactions between associated enterprises.

## Transfer pricing adjustment

An adjustment to the tax liability of an enterprise when a tax jurisdiction applies the arm's length principle to transactions between associated enterprises in a transfer pricing case. See also "primary adjustment", "secondary adjustment", "correlative adjustment" and "corresponding adjustment".

## Unilateral Resolution

As part of the MAP process, one Competent Authority provides relief from double taxation or taxation not in accordance with the treaty. This unilateral relief can be by way of one Competent Authority withdrawing its initial adjustment or by the other Competent Authority providing a correlative adjustment.

## Withholding Tax

A tax imposed at source, whereby a third party – the paying agent (such as a bank paying interest or a company distributing dividends to shareholders) – must "withhold" an amount from the payment and remit it to the local tax authorities. It is a common way of ensuring that tax is collected from benefits accruing to non-resident taxpayers. Withholding tax will be "final" if there is no later adjustment as part of assessment. Otherwise, it is regarded as "provisional", and depending on the taxpayer's final tax liability there may be a refund or (more rarely) a requirement for further payment by the taxpayer.