



**Isle of Man  
Government**

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#### 1. Introduction

Income tax was first introduced in the Isle of Man by the Income Tax Act 1918 which is described in its preamble as being "An Act to provide for a Tax on income under the system of taxation introduced by the Income Tax Act 1918 introduced was based broadly upon the system then in operation in the United Kingdom and in many respects the similarities remain. This is an important factor as regards the interpretation of the provisions of the Manx Income Tax Acts because in a case where the interpretation of a provision or an expression in those Acts has been the subject of an appeal in the courts of the United Kingdom, the judgment in that appeal is a persuasive authority for the adoption of the same interpretation in a similar case in the Isle of Man."

The Income Tax Act 1918 was followed by successive amending Acts in the years that followed until the then existing legislation was consolidated in the Income Tax Act 1946. This was, in turn, followed by successive amending Acts until the then existing legislation was consolidated in the Income Tax Act 1970.

The Income Tax Act 1970 has since been amended by the —

- (i) Income Tax Act 1971;
- (ii) Income Tax Act 1973;
- (iii) Income Tax Act 1974;
- (iv) Income Tax Act 1976;
- (v) Income Tax Act 1978;
- (vi) Income Tax (Retirement Benefit Schemes) Act 1978;
- and
- (vii) Income Tax (Amendment) Act 1979.

These Acts are collectively referred to as being "the Income Tax Acts 1970 to 1979". Section 120 of the Income Tax Act 1970 includes the following definitions—

"Income Tax Acts" means this Act and any other enactment relating to income tax;

"Manx income tax" and "Manx tax" means income tax payable under the Income Tax Acts."

The Income Tax Bill 1979 contains the new income tax provisions that were proposed by the Finance Board as a part of the Budget for 1979/80. The Bill was given its first and second readings by the House of Keys on 30th October and 6th November, 1979, respectively. It was then referred to a Select Committee for consideration. As it is unlikely to complete all its stages and obtain the Royal Assent before some time in 1980, the Bill is likely to be known as the Income Tax Act 1980 when it is enacted. It is proposed that the provisions of this Bill, when enacted, shall have effect in respect of the income tax year commencing on 6th April, 1979, and of each succeeding income tax year.

# Mutual Agreement Procedure in the Isle of Man's Double Taxation Agreements

## Guidance Note – GN 57

**PLEASE NOTE:**

This guidance has no binding force and does not affect your right of appeal on points concerning your liability to tax.

The information in this booklet can be provided in large print on request.

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## Introduction

This document provides guidance on when and how a taxpayer can utilise the mutual agreement procedure articles in the Isle of Man's Double Taxation Agreements ("DTAs").

## What is a Mutual Agreement Procedure?

A mutual agreement procedure is usually included in DTAs as a way of providing a mechanism to try to resolve cases where taxpayers believe that they have not been dealt with correctly under the terms of a DTA by one, or both, of the jurisdictions. The procedure is typically provided for in a separate article of the DTA entitled "Mutual Agreement Procedure". The procedure allows the Competent Authorities (typically officers within the respective tax administrations) to discuss a case and requires that they endeavour to reach a satisfactory solution.

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

## Which of the Isle of Man's DTAs include a Mutual Agreement Procedure?

All of the Isle of Man's existing comprehensive DTAs include provisions to initiate a mutual agreement procedure ("MAP"). As at November 2020 these are the DTAs with:

Bahrain	Jersey	Seychelles
Belgium	Luxembourg	Singapore
Estonia	Malta	United Kingdom
Guernsey	Qatar	

It is Isle of Man policy when negotiating comprehensive DTAs to include a MAP article that complies with the OECD Base Erosion and Profit Shifting minimum standards.

The Isle of Man 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 although some only apply to individuals or to transfer pricing.

All the Isle of Man's DTAs can be found [here](#).

## Who can request the Mutual Agreement Procedure?

Any person who considers that they may not have been taxed in accordance with the provisions of a DTA can initiate the MAP<sup>1</sup>. Throughout this guide the person initiating the MAP is referred to as the "taxpayer".

The taxpayer is not a formal party to the consultations between the Competent Authorities once a MAP request has been initiated, but may be invited to participate informally at the discretion of both of the Competent Authorities. Where the Isle of Man Competent Authority considers such participation is likely to be useful, the Isle of Man will press for, but cannot guarantee it. The position of the Competent Authorities of DTA partner jurisdictions in this respect is outside of the Isle of Man's control.

The Isle of Man Competent Authority is willing to accept MAP requests for consideration with regards to transfer pricing cases (taxpayer-initiated foreign adjustments) and make corresponding adjustments, as applicable.

For the avoidance of doubt, this access to MAP is possible in the Isle of Man, regardless of whether or not the applicable DTA includes the equivalent of Article 9(2) of the Model Tax Convention (although all current comprehensive DTAs do already contain this, or a variant).

## When can I initiate a MAP?

Some examples of when a MAP may be appropriate are<sup>2</sup>:

- 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

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<sup>1</sup> Some of the Isle of Man's limited DTAs only apply to individuals therefore the MAP process under these agreements can only be initiated by an individual.

<sup>2</sup> Some of the Isle of Man's limited DTAs only provide a MAP in relation to transfer pricing e.g. the agreements with Australia and New Zealand.

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 from using the MAP procedure simply because you had already agreed the tax treatment in a particular situation with the Assessor of Income Tax, if using the MAP procedure is valid under the relevant DTA. Any audit settlements between the Assessor of Income Tax and the taxpayer do not preclude access to a MAP.

It is important to note that an International Arrangement such as a DTA has effect as part of the law of the Isle of Man (section 104B(1) of the Income Tax Act 1970). It will have effect despite any enactment or other document or any other rule of law (section 104E(1) of the Income Tax Act 1970) and therefore a decision made under the MAP process can amend an assessment raised under domestic law.

Most of the Isle of Man's current DTAs require that a MAP request is initiated within three years of the first notification of the matter to which the request relates (the DTA with Qatar provides a two year time limit).

### **Making a Mutual Agreement Procedure request ("MAP request")**

If you are resident in the Isle of Man, or otherwise consider that you are entitled to benefits under a DTA, and believe that you are not being taxed in accordance with the provisions of a DTA, entered into between the Isle of Man and another jurisdiction, you can present your case to the Isle of Man Competent Authority for assistance.

"Competent Authority" is the title given to the person(s) formally authorised to deal with matters arising under a DTA and is typically an officer or officers within the tax administration. For the Isle of Man, the Assessor of Income Tax or her delegate is the Competent Authority for all of the Island's DTAs. For the purposes of MAP requests the contact details of the Isle of Man Competent Authority are provided at the end of this Guidance Note.

If your MAP request is validly made and is considered to be justified, and is not a matter that the Isle of Man Competent Authority alone can agree can be dealt with, the Isle of Man Competent Authority will always discuss the case with the Competent Authority of the other jurisdiction and try to resolve it in

accordance with the relevant DTA. If following the consultation with the Competent Authority of the other jurisdiction it is still considered that the request is not valid or justified, the Isle of Man Competent Authority will explain to you why they 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 some Isle of Man DTAs, you may also 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 Isle of Man Competent Authority.

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 the Isle of Man's current comprehensive and limited DTAs can be accessed online [here](#).

It is possible that the provisions of the relevant DTA may have changed since it was originally signed. The most up-to-date versions of all the Isle of Man's DTAs are available on the Income Tax Division's website. However, if you make your MAP request to the Isle of Man 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 Isle of Man Competent Authority for dealing with a MAP request on your behalf.

A MAP request that spans multiple tax years may be submitted. It should, however, be noted that only year(s) that fall within the time limits detailed in the relevant DTA will be considered by the Isle of Man Competent Authority.

Under the Isle of Man's Income Tax 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 Assessor of Income Tax 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 Assessor but, in practice, it is exceptional for the Assessor to reject an application for suspension which is reasonable based on the facts.

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

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 and having taken the facts of the case into account.

If additional tax becomes payable, after a MAP adjustment is made, the tax due will be payable in accordance with Isle of Man Income Tax legislation. 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 Income Tax Debt Collection and Prosecution Team, in order to discuss the payment options.

Where a MAP request is pending the Isle of Man Competent Authority will ensure that any relevant outstanding amount will be held over until the MAP is completed. However, it should be noted that interest will still run from the original due date on any final agreed liability.

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

Where the Isle of Man's Competent Authority considers a MAP request not to be justified they will write to the other treaty partner to inform them of their decision. This will allow the treaty partner to provide its views on the case.

### **What to include in 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 Isle of Man's Competent Authority. However, the following are examples of the information you may need to submit to support your MAP request:

1. The full names and addresses of the parties to which the MAP relates, and their 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. Contact details for the overseas Competent Authority, if the claim has already been made in the other jurisdiction.
5. The DTA article(s) that you believe is/are not being correctly applied, and your interpretation of the application of the article(s).
6. The taxation years or periods involved.
7. The relationship, situation, or structure of the transactions, issues, or related parties involved.
8. 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).
9. 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).



10. 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, copies translated into English should be provided, although where documentation is voluminous, a description of the documentation may be acceptable as a starting point).
11. A schedule of any known time limitations in the other jurisdiction in respect of the years for which relief is sought.
12. 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.
13. Whether the request for Competent Authority assistance involves issues that are currently being, or were previously, considered by the tax authorities of the other jurisdiction as part of an advance pricing arrangement, ruling, or similar proceedings.
14. If not already provided, details of any person authorized to act for you in relation to the request.
15. Any other facts that you may consider relevant.
16. A copy of any settlement or agreement reached with the other jurisdiction which may affect the MAP process.
17. Your views on any possible bases on which to resolve the issues (regardless of whether or not these have 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.

### **Who should I contact to make a MAP request?**

You can make a MAP request to the Isle of Man Competent Authority, in writing, addressed to the following:

Monica Dixie  
Deputy Assessor of Income Tax  
Income Tax Division  
Government Office  
Douglas  
Isle of Man  
IM1 3TX  
British Isles

If you choose to make a MAP request to one of our DTA partners, instead of to the Isle of Man Competent Authority, they may contact the Isle of Man Competent Authority at the same postal address shown above.

## **How long do MAP cases take to resolve?**

The Isle of Man Competent Authority will endeavour to tell you how they 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 Isle of Man Competent Authority aims to conclude MAP requests within two 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.

In the event that the Isle of Man 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 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.

Where the Isle of Man Competent Authority receives a MAP request and does not consider the taxpayer's objection to be justified, the Competent Authority will consult the Competent Authority of the other jurisdiction to provide their view of the case. This is part of the consultation to resolve the case.

Where the Competent Authorities reach agreement on a case the Isle of Man Competent Authority will ensure that this agreement is implemented on a timely basis including by making appropriate adjustments to the tax assessed e.g. in transfer pricing cases.

However, unfortunately, sometimes 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 the Isle of Man's DTAs address the inability of the Competent Authorities to reach a decision by providing for an arbitration procedure, for example the DTAs with Guernsey and Jersey. 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.

## **Can I withdraw my MAP request?**

A taxpayer can withdraw a MAP request made to the Isle of Man 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 Isle of Man 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.

## **Our service commitment to you**

In the resolution of MAP requests, the Assessor of Income Tax undertakes that the Isle of Man 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. For example, the Isle of Man does not use performance indicators for its Competent Authority in charge of MAP processes based on the amount of adjustments or tax revenue arising from dealing with MAP cases.

As most of the Isle of Man'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 Isle of Man's Competent Authority aims to be consistent and reciprocal in the positions they take 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 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.

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

## **Contact information**

Isle of Man Competent Authority:

Monica Dixie  
Deputy Assessor of Income Tax  
Income Tax Division  
Government Office  
Douglas  
Isle of Man  
IM1 3TX  
British Isles

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