

Commonwealth of Dominica



Mutual Agreement Procedure Guidelines

JANUARY 1, 2024

ACRONYMS AND ABBREVIATIONS

| | |
|------|---|
| APA | Advance Pricing Agreement |
| CA | Competent Authority |
| DTA | Double Taxation Agreement |
| IRD | Inland Revenue Division |
| ITAU | International Tax Affairs Unit |
| MAP | Mutual Agreement Procedure |
| OECD | Organization for Economic Corporation and Development |

| | |
|---|-----------|
| 1. INTRODUCTION | 1 |
| 2. DEFINING TAX CONVENTION | 2 |
| 3. SCOPE OF THE MUTUAL AGREEMENT PROCEDURE | 3 |
| 4. REASONS TO REQUEST A MAP | 4 |
| 5. WHO CAN REQUEST A MAP? | 5 |
| 6. HOW TO BEGIN A MAP REQUEST? | 6 |
| 6.1 FORMAT FOR MAKING A MAP REQUEST | 6 |
| 6.2 TIME LIMIT FOR MAP REQUEST | 8 |
| 6.3 FEES FOR A MAP APPLICATION | 8 |
| 6.4 WHAT IS EXPECTED WHEN A TAXPAYER MAKES A MAP REQUEST | 8 |
| 6.6 PROCESSING A MAP REQUEST | 9 |
| 7. PROCESSING TIMES FOR A MAP APPLICATION | 9 |
| 7.1 RESOLUTION FOR A MAP CASE APPLICATION | 10 |
| 7.3 MAP CASE WITHDRAWAL BY TAXPAYER | 11 |
| 7.4 COMPETENT AUTHORITY UNABLE TO REACH AN AGREEMENT | 11 |
| 8. AUDIT SETTLEMENTS | 12 |
| 9. INTEREST AND PENALTIES | 12 |
| 10. COLLECTIONS PROCESS AND MAP | 12 |
| APPENDIX 1: CONTACT DETAILS FOR SUBMITTING A MAP REQUEST UNDER A DTA | 13 |
| APPENDIX 2: MAP APPLICATION FORM | 14 |

1. Introduction

This document outlines the procedure for taxpayers to seek help from the Commonwealth of Dominica and the competent authority to resolve tax disputes that do not align with the relevant Double Taxation Agreement (DTA). In Dominica, the authority responsible for implementing DTA and other international tax agreements is the Minister of Finance. Although, the competent authority is the Minister of Finance, under section 4 of the Tax Information Exchange Act, Chapter 67:02 of the laws of Dominica, the Comptroller of Inland Revenue is provided with access powers to process requests. The ultimate aim is to communicate quickly and efficiently with treaty partners, while also preserving strong relationships with international counterparts.

This document does not include guidance on the applications for Advance Pricing Agreements (APAs). The Commonwealth of Dominica does not offer a bilateral APA program.

MAP assistance is provided by Inland Revenue's International Tax Affairs Unit. Contact details for submitting a request for MAP assistance to Revenue are included in Appendix 1 of this document.

More information on the application of MAP in Dominica can be found in the Dominica MAP Profile published on the OECD's website at:

*chrome
extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.oecd.org/tax/dispute/dominica-dispute-resolution-profile.pdf*

2. Defining Tax Convention

A tax convention, agreement, or treaty is a formal arrangement between two or more countries to manage taxation when their domestic tax laws apply simultaneously to a specific issue or taxpayer. These agreements offer a uniform method for addressing common issues related to international double taxation.

In total Dominica has listed two tax treaty agreements. One (1) with Switzerland and one (1) CARICOM multilateral agreement. The Caribbean Community (CARICOM) Convention applies to, Antigua and Barbuda, Barbados, Belize, Grenada, Guyana, Jamaica, St. Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines and Trinidad and Tobago.

3. Scope of The Mutual Agreement Procedure

Dominica's tax treaties allow taxpayers to request MAP access regardless of domestic remedies. Dominica has indicated that MAP can be accessed even if the taxpayer has pursued domestic administrative or judicial remedies. However, if a case is under review, MAP will be paused until the review concludes. Dominica currently lacks a policy on overriding court decisions in MAP cases.

Under the relevant DTA provisions, taxpayers can pursue MAP without exhausting domestic remedies first. If domestic remedies are still available, Dominica's competent authority might require suspension of these remedies or delay MAP until they are exhausted. Taxpayers can choose between resolving the issue through MAP, domestic procedures, or both.

A MAP case resolution may be influenced by a court's decision within Dominica. The competent authority must adhere to court decisions and may be restricted from settling MAP in ways inconsistent with those decisions. In some instances, MAP relief might be precluded by the court's ruling, but bilateral discussions with other Contracting States could offer alternative relief options. Any relief for double taxation or non-compliance with the Tax Convention could only be granted by the other Contracting State at its competent authority's discretion.

Dominica's competent authority will adhere to the time limits specified in its tax treaties' equivalents of Article 25 of the OECD Model Tax Convention. For treaties lacking a MAP filing period, Dominica grants that a request for MAP assistance must be submitted within three (3) years from the first notification of the action resulting in taxation not in accordance with the relevant DTA.

4. Reasons to request a MAP

The Mutual Agreement Procedure (MAP) can be requested when an individual covered by a Double Taxation Convention (DTC) believes that the actions of Dominica and/or the other state will lead to or have resulted in taxation that does not comply with the provisions of the DTC. This applies specifically in situations where;

- ❖ A The taxpayer and tax authorities have conflicting interpretations and applications of provisions or principles within the DTC
- ❖ Adjustments to profits attributable to a permanent establishment in one state of an enterprise from another state have occurred or are anticipated.
- ❖ The taxpayer is considered a resident of both states, or there is disagreement on which state they should be considered a resident of.
- ❖ There is disagreement between the taxpayer and the tax authorities who made an adjustment regarding whether the conditions for applying an anti-abuse provision of a DTC have been satisfied.

5. Who can request a MAP?

- ❖ Any tax resident of Dominica who believes that actions by one or both Contracting States result in taxation that does not comply with the relevant Double Taxation Agreement (DTA) provisions may present their case to the Comptroller of the Inland Revenue Division, regardless of the domestic legal remedies available in those states.
- ❖ Dominica nationals who are not tax residents of Dominica can only request a Mutual Agreement Procedure (MAP) from the Comptroller of the Inland Revenue Division if their case involves discriminatory tax practices.
- ❖ In a case where an adjustment is made that affects interrelated enterprises resident in different jurisdictions, it is advisable that each of those enterprises submit a request for initiating a MAP to the Competent Authority of that governing state of which it is a resident.
- ❖ A foreign adjustment initiated by a taxpayer is considered valid if it demonstrates the taxpayer's sincere effort to accurately and timely report adjusted taxable income or profits from a controlled transaction or permanent establishment, aiming for an arm's length outcome, and if the taxpayer has met all relevant obligations under the Income Tax Act. The Comptroller will process MAP requests related to such bona fide adjustments based on the merits of each case.

6. How to begin a MAP request?

The MAP process begins when an individual believes that the actions of one or both Contracting States lead to or will lead to taxation that deviates from the relevant DTA's provisions. This process can be started by a taxpayer even before any tax is assessed or notified. In such cases, the taxpayer needs to demonstrate that the anticipated tax will conflict with the Convention's terms. The actions must be likely, based on factual evidence, and may result in double taxation or contradict the DTA rules.

For a MAP case to be accepted by the competent authority:

- I. The taxpayer must submit the case to the appropriate authority; and*
- II. The request must be made within the specified time frame.*

6.1 Format for making a MAP request

In order to request MAP assistance, a taxpayer must submit the completed MAP Application to the Competent Authority of Commonwealth of Dominica. Please refer to the Map Application form attached. A copy can also be found on website www.ird.gov.dm. The correspondence must be in English and should be addressed to:

Mrs. Sylma Lloyd
Comptroller(Ag)
Inland Revenue Division
High Street, Roseau
DOMINICA
Tel #: 767-2663635/ Cell#: 767-2776120
Email.: scotlandlloyds@dominica.gov.dm; ITAU@dominica.gov.dm

The following is required to complete a MAP request:

- i) Identity of the taxpayer(s) covered in the MAP request – the identity of the taxpayer(s) covered in a MAP request must be sufficiently specific to allow the competent authority to identify and contact the taxpayer(s) involved.
- ii) The basis for the request – the MAP request should state the specific tax treaty including the provision(s) of the specific article(s) which the taxpayer considers is not being correctly applied by either one or both Contracting Party
- iii) (iii) Facts of the case – the MAP request should contain all the relevant facts of the case including any documentation to support these facts, the taxation years or period involved and the amounts involved.
- iv) iv) Analysis of the issue(s) requested to be resolved via MAP – the taxpayer should provide an analysis of the issue(s) involved, including its interpretation of the application of the specific treaty provision(s), to support its basis for making a claim that the provision of the specific tax treaty is not correctly applied by either one or both Contracting Party.
- v) Whether the MAP request was also submitted to the competent authority of the other Contracting Party – If so, the MAP request should make this clear, together with the date of such submission, the name and the designation of the person or the office to which the MAP request was submitted.
- vi) (vi) Whether the MAP request was also submitted to another authority under another Instrument that provides for a mechanism to resolve treaty-related disputes
- vii) Whether the issue(s) involved were previously dealt with – the request should state whether the issue(s) presented in the MAP request has been previously dealt with
- viii) A statement confirming that all information and documentation provided in the MAP request is accurate and that the taxpayer will assist the competent authority in its resolution of the issue(s) presented in the MAP request by furnishing any other information or documentation required by the competent authority in a timely manner.

6.2 Time limit for MAP request

The deadline for submitting a request for MAP assistance to the Commonwealth of Dominica CA is specified by the applicable DTA and begins from the first notification of the action resulting in taxation not in accordance with the DTA. If the deadline outlined in the DTA is missed, the request for MAP assistance will be rejected. The taxpayer will then be informed in writing that the request was not accepted due to the time limitation.

Dominica will adhere to Article 25 of the OECD Model Tax Convention, which mandates that requests for MAP assistance must be submitted within three years from the initial notification of the action causing taxation that is inconsistent with the relevant DTA.

6.3 Fees for a MAP application

There are no fees for filing a MAP request with the competent authority in Dominica.

6.4 What is expected when a taxpayer makes a MAP request

The competent authority may request additional information to assess the validity of a MAP objection or to gain a clearer understanding of the case's details. Taxpayers are required to fully cooperate by providing complete and prompt information to aid in dispute resolution. While direct taxpayer involvement in MAP discussions between competent authorities is generally not permitted, taxpayers may be asked to present their views, clarify facts, or even present their case directly to ensure a shared understanding. When making a MAP request, taxpayers need to provide detailed information about the case, including relevant facts, evidence of the taxation issue, and a clear explanation of how the tax treatment deviates from the applicable DTA. They must also submit the request within the time limits specified by the relevant treaty, typically within three years from the initial notification of the issue.

6.6 Processing a MAP request

The Dominican competent authority performs a preliminary analysis within thirty days of receiving a MAP request. This analysis verifies the request's timeliness, the legitimacy of the requester, compliance with the required format and criteria, and whether the case can be addressed within a MAP. It also checks if the legal instruments apply, if the provided information is accurate and complete, if the objections seem justified, and if the Dominican competent authority can resolve the case unilaterally.

- ❖ *If the MAP application form is incomplete, the CA will request the missing information in writing, giving the taxpayer thirty days from the date of the correspondence to provide the necessary details. If the information is not provided within this period, the CA will be unable to proceed with the MAP application. In the event of a request being rejected, the Competent authority will supply the taxpayer with the reasons for its decision.*

7. Processing times for a MAP application

Although the duration to resolve a MAP case can differ based on its complexity, the Dominican competent authority aims to finalize a case within twenty-four (24) months from the date the taxpayer's MAP Request is accepted. Timelines may be adjusted, either extended or shortened, depending on the specific details and situation of each case.

7.1 Resolution for a MAP case application

Before finalizing the MAP case with the related competent authorities, the Dominican competent authority will inform the individual who submitted the MAP request of the terms and conditions of the Agreement. This individual must then declare within thirty (30) days whether they accept these terms as the final resolution of the case. Acceptance of the Agreement by the requestor requires them to withdraw any pending judicial or administrative cases. If the requestor does not accept the terms within the given timeframe, the Dominican competent authority will propose to the other State's CA to close the MAP case without an agreement. Once the requestor accepts the Agreement, the Dominican competent authority will formally confirm it in writing with the CA of the other State.

7.2 Acceptance of the MAP adjudication by the taxpayer

If the taxpayer accepts the mutual agreement and provides written confirmation of this acceptance, the competent authority will then direct the ITAU to promptly implement and execute the agreement. The taxpayer will also receive written instructions on how to make any additional payments, if necessary, and revised tax calculations may be required. Any extra tax owed must be settled within thirty to sixty (30-60) days from the date of the Revised Notice of Assessment. If the applicable Double Taxation Agreement (DTA) allows, the agreement will be enforced regardless of domestic legal time limits in the Contracting States.

If a refund is owed to the taxpayer, they will be notified and instructed to contact the Inland Revenue Department to initiate the refund process. The taxpayer must provide revised tax calculations for the affected periods to the Inland Revenue Department. Generally, the refund will be processed within thirty to sixty (30-60) days from the date of the Revised Notice of Assessment. Before issuing a refund, all of the taxpayer's tax accounts must be cleared.

7.3 MAP case withdrawal by taxpayer

If a taxpayer wants to withdraw a MAP request, they must promptly provide the Competent Authority to which the request was submitted with a written notification of the withdrawal. This notification should also include the reason for the withdrawal.

7.4 *Competent authority unable to reach an agreement*

If the Dominica competent authority cannot reach an agreement with the CA of the other Contracting State, the Dominica competent authority will notify the taxpayer in writing, ideally within thirty (30) days of the meeting, explaining why an agreement was not achieved. The Dominica competent authority is not required to continue discussions if the other CA has decided that an agreement is not possible.

8. Audit settlements

Taxpayers are entitled to access the Mutual Agreement Procedure (MAP) even if they have already reached audit settlements with the Inland Revenue Department.

9. Interest and Penalties

The Dominica competent authority may choose to waive interest and penalties based on the outcome of the MAP and the specific circumstances that led to their imposition.

10. Collections process and MAP

The Dominica competent authority may request the IRD to suspend tax collection during an ongoing MAP request until further notice.

Appendix 1: Contact details for submitting a MAP request under a DTA

Requests for MAP assistance that relate to the attribution of profits are dealt with by the International Tax Affairs Unit of the Inland Revenue Division and should be addressed to:

Sylma Lloyd

Comptroller(Ag)

Inland Revenue Division

High Street, Roseau

DOMINICA

Tel #: 767-2663635

Cell#: 767-2776120

Email.: scotlandlloyds@dominica.gov.dm; ITAU@dominica.gov.dm

Appendix 2: MAP application form

In order to request MAP assistance, a taxpayer must submit the completed MAP Application to the Competent Authority of the Commonwealth of Dominica. Please refer to the [Map Application](#) form attached. A copy can also be found on websites www.ird.gov.dm The correspondence must be in English and should be addressed to contact details in appendix 1.



COMMONWEALTH OF DOMINICA MUTUAL AGREEMENT PROCEDURES (MAP) APPLICATION



| | | | |
|--|--|--|--|
| Taxpayer Name: Company name: Taxpayer/ Company Tax#: | | Street Address Including City, State, and ZIP Code | |
| Telephone: | | Birthdate: | |
| Email Address: | | | |
| Mailing Address: | | Tax period: | |

+ **REASON FOR REQUEST**

DETAILS OF ISSUES:
Please provide details of any appeals or legal actions taken by you or other parties concerning the transactions in question. Include copies of all relevant documentation that supports the claim of double taxation, such as tax assessment or reassessment notices, objection notices, tax audit reports, or similar documents. You may attach a supplementary sheet if needed to this application.

A REQUEST WAS SUBMITTED TO THE OTHER CONTRACTING STATE. YES NO

If yes please attach a copy of the submission, clearly indicating the date, name and office to which the request was submitted.

THE CASE WAS SUBMITTED TO ANOTHER AUTHORITY WHICH RESOLVES TREATY RELATED ISSUES. YES NO

I declare that all information given on this form is true and correct. I understand that the Government of the Commonwealth of Dominica has the authority to disclose the information provided to the other contracting states. I affirm to assist the competent authority in its resolution of the issue(s) presented in the MAP request by furnishing any other information or documentation required by the competent authority in a timely manner.

| | | | |
|-------------------|--|-----------|---|
| Name | <i>Name of the Person Submitting this Form (print)</i> | Signature | <i>Signature of the Person Submitting this Form</i> |
| Date of Signature | | | |