

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

## **Part 35-02-08**

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## 1 Introduction

The purpose of this document is to set out the process through which taxpayers can request assistance from the Competent Authority in Ireland to resolve disputes arising from taxation not in accordance with the provisions of the relevant double taxation agreement (“DTA”) and/or the EU Arbitration Convention<sup>1</sup>. In Ireland, Revenue is the Competent Authority<sup>2</sup>. Taxpayers may request mutual agreement procedure (“MAP”) assistance under the terms of the relevant DTA and/or the EU Arbitration Convention<sup>3</sup>. MAP assistance is provided by Revenue’s International Tax Division. Contact details for submitting a request for MAP assistance to Revenue are included in Appendix 1 of this document.

This document distinguishes between requests for MAP assistance and requests for correlative adjustments. In the case of a correlative adjustment, a foreign associated taxpayer has settled a case unilaterally with its foreign tax administration with respect to a transaction with its Irish associated taxpayer. Subsequently the associated Irish taxpayer makes a claim to Revenue for a correlative adjustment. Revenue will consider the appropriateness of such claims and will only make a correlative adjustment to the profits of the Irish taxpayer to the extent that it considers the adjustment to be arm’s length. Details of how to submit a request for a correlative adjustment are contained in Section 4.

This document does not deal with applications for advance pricing agreements (“APAs”). Revenue has published separate guidelines with respect to bilateral APA applications in Ireland<sup>4</sup>.

This document may be revised from time to time as necessary.

### 1.1 Legal basis for a MAP request

Article 25 of the OECD’s Model Tax Convention on Income and on Capital<sup>5</sup> (“MTC”) provides a mechanism to resolve difficulties arising where the actions of one or both of the Contracting States result or will result for the taxpayer concerned in taxation not in accordance with the provisions of the convention. Under the equivalent of Article 25(2) of the MTC, within the relevant Irish DTA, Revenue will endeavour to resolve such cases by mutual agreement with the Competent Authority of the other Contracting State. In such a case a taxpayer may request assistance from the Competent Authority to resolve the issue.

Generally, Ireland’s DTAs state that taxpayers must approach the Competent Authority of their country of residence to request MAP assistance. In cases where an

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<sup>1</sup>Convention on the elimination of double taxation in connection with the adjustment of profits of associated enterprises - 90/436/EEC, referred to as the EU Arbitration Convention.

<sup>2</sup> Certain officers in Revenue are authorised representatives for the purposes of being a Competent Authority under the terms of Ireland’s DTAs and the EU Arbitration Convention.

<sup>3</sup> The EU Arbitration Convention only applies to cases involving transfer pricing or the attribution of profits to permanent establishments.

<sup>4</sup> [Bilateral Advance Pricing Agreement Guidelines, September 2016](#)

<sup>5</sup> Model Tax Convention on Income and on Capital, Full Version (as it read on 15 July 2014)

adjustment to profits is made by a tax administration that affects related parties in different jurisdictions, it is advisable for each taxpayer to make a separate request for MAP assistance to the Competent Authority of the country in which it is resident.

It may be noted that in June 2017 Ireland was one of a number of countries that signed the Multilateral Instrument ("MLI")<sup>6</sup> as part of the OECD Base Erosion and Profit Shifting ("BEPS") project. One of the provisions of the MLI allows taxpayers to approach the Competent Authority of either jurisdiction to request MAP assistance under a DTA. Ireland intends to adopt this provision when the MLI is ratified in the Finance Act 2017. The new rule will only apply, however, in treaties where Ireland's treaty partner has also adopted the provision and ratified the MLI. Where both countries have elected to apply the new rule, taxpayers will be able to approach the Competent Authority of either treaty partner jurisdiction in order to request MAP assistance. Taxpayers should consult the relevant DTA and the relevant MLI provisions (following ratification by both treaty partners) when making a MAP request.

Article 6 of the EU Arbitration Convention provides that a taxpayer may present a MAP request to the Competent Authority where the taxpayer considers that the principles contained in Article 4 of the EU Arbitration Convention have not been observed. For such cases, the request should be submitted to the Competent Authority of both jurisdictions at the same time<sup>7</sup>.

## **2 Making a MAP request**

### **Valid MAP request as considered by Revenue under the DTA and/or EU Arbitration Convention**

In order to request MAP assistance, a taxpayer must submit the MAP request in writing to the relevant Competent Authority, providing the required information as specified in section 2.1.2 below, of the action that has resulted or will result in taxation not in accordance with the relevant DTA and/or the EU Arbitration Convention<sup>8</sup>.

The MAP request must be submitted within the time limit specified in the applicable DTA and/or the time limit specified in Article 6 of the EU Arbitration Convention (refer to section 2.1.1 below).

A valid MAP request must contain the minimum information set out in section 2.1.2 below.

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<sup>6</sup> The purpose of the MLI is to enable existing tax treaties to be modified, in order to implement the tax treaty-related measures to combat aggressive tax planning that were agreed as part of the OECD/G20 BEPS project.

<sup>7</sup> [Final Report on Improving the Functioning of the Arbitration Convention - JTPF/002/2015/EN Annex I - Revised Code of Conduct for the effective implementation of the Arbitration Convention](#)

<sup>8</sup> Taxpayers may discuss the case with the Competent Authority prior to making a written MAP request.

### 2.1.1 Time limit for making a MAP request

The time limit for submitting a request for MAP assistance under a DTA is determined by the relevant DTA. Generally, Ireland's DTAs follow Article 25 of the MTC and provide that a request for MAP assistance must be submitted within 3 years from the first notification of the action resulting in taxation not in accordance with the convention. However, some treaties provide for a different time period. Therefore, taxpayers should always consult the relevant DTA at an early stage to ensure that they submit a request for MAP assistance within the specified time limit<sup>9</sup>. **Where the time limit specified in a DTA has not been met, a request for MAP assistance will not be accepted.**

Where taxpayers request MAP assistance under the EU Arbitration Convention, Article 6(1) provides that a MAP request must be presented within 3 years from the first notification of the action which results or is likely to result in double taxation.

Revenue considers the date on which the taxpayer receives the first tax assessment notice or equivalent that results in double taxation as being the beginning of the 3 year period.

### 2.1.2 Minimum information required to be a valid MAP request

In order for a MAP request to be considered a valid request under the DTA, the MAP request submitted to the Competent Authority under the equivalent of Article 25(1) of the MTC should specify, at a minimum:

- the tax period(s) concerned;
- the nature of the action giving rise, or expected to give rise, to taxation not in accordance with the DTA; and
- the full names and addresses of the parties to which the MAP relates.

In order for a MAP request to be considered a valid request by Revenue under the EU Arbitration Convention, the MAP request submitted to the Competent Authority should specify, at a minimum<sup>10</sup>:

- the identification of the taxpayer to which the MAP relates and the other parties to the relevant transactions;
- the tax period(s) concerned;
- details of the relevant facts and circumstances of the case;
- copies of any tax assessment notices, tax audit reports or equivalent documents leading to the alleged double taxation;
- details of any appeals and litigations initiated by the taxpayer or other parties to the relevant transactions; and
- an explanation by the taxpayer of why it considers that the principles of the EU Arbitration Convention have not been observed.

The taxpayer must also undertake to respond as completely and quickly as possible to requests by the Competent Authority for further information.

<sup>9</sup> <http://www.revenue.ie/en/companies-and-charities/international-tax/tax-treaties/index.aspx>

<sup>10</sup> [Final Report on Improving the Functioning of the Arbitration Convention - JTPF/002/2015/EN Annex I - Revised Code of Conduct for the effective implementation of the Arbitration Convention](#), Section 7.2.

**Where the MAP request, either under Article 25(1) of the MTC or Article 6(1) of the EU Arbitration Convention, does not contain this minimum amount of information, it will not be regarded as a MAP request by Revenue, i.e. it will not be regarded as submitted for the purpose of satisfying the time limit requirements (refer to section 2.1.1 above) in the relevant DTA or the EU Arbitration Convention.**

## **2.2 Complete MAP request**

While a MAP request will be regarded as presented for time limit purposes where the information set out in section 2.1.2 above has been provided, Revenue will not commence the MAP process until a complete request for MAP assistance is received. In order for a MAP request to be considered complete, taxpayers must provide the relevant information outlined in Appendix 2.

### **2.2.1 Start date/initiation of a MAP request**

The receipt of the information outlined in Appendix 2 will determine the start date for a MAP request under a DTA. This start date is relevant for the purposes of computing the time taken to resolve a MAP request<sup>11</sup>.

For the purpose of determining the starting point of the two year period under Article 7(1) of the EU Arbitration Convention<sup>12</sup>, a MAP request will not be regarded as initiated until all of the relevant information requested in Appendix 2 of this document has been provided. Taxpayers are advised to consult the Revised Code of Conduct for the Effective Implementation of the Arbitration Convention for further information<sup>13</sup>.

### **2.2.2 Analysis of a MAP request and taxpayer role**

As Revenue begins the detailed analysis of the MAP request, it is likely that there will be further information requests.

Taxpayers are expected to cooperate fully with Revenue by providing complete and accurate information without delay when requested. Without proper information and documentation, Revenue may be unable to resolve disputes.

MAP discussions between Revenue and the other Competent Authority are a government-to-government process. Taxpayer involvement 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, taxpayers may be invited to make a presentation before the Competent Authorities to ensure a common understanding of the facts of a particular case.

Throughout the MAP process, the taxpayer should ensure that each tax administration is provided with the same information at the same time. This applies

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<sup>11</sup> The start date for a MAP case is defined in the "MAP Statistics Reporting Framework" published by the OECD in October 2016 <http://www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf> (pages 33 - 56).

<sup>12</sup> Article 7(1) of the EU Arbitration Convention provides for a two year period for the competent authorities to resolve a case prior to the case being submitted to an advisory commission (arbitration panel).

<sup>13</sup> [Final Report on Improving the Functioning of the Arbitration Convention - JTPF/002/2015/EN Annex I - Revised Code of Conduct for the effective implementation of the Arbitration Convention](#), Section 7.2.

to any information submitted by the taxpayer to either tax administration as part of the MAP process.

Revenue will keep the taxpayer informed of the status of their MAP request on an on-going basis.

## **2.3 Confidentiality**

The information submitted to Revenue in connection with a MAP request will be treated as confidential in accordance with the provisions of the Taxes Consolidation Act ("TCA") 1997.

The exchange of information between Revenue and the Competent Authority of the treaty partner country in relation to a MAP shall be carried out in accordance with the provisions of the relevant DTA. Information exchanged under Ireland's DTAs is confidential and may only be used and disclosed in accordance with the provisions of the treaty.

Due respect will also be given to the confidentiality of government-to-government communication as set out in the preamble to the Revised Code of Conduct for the effective implementation of the Arbitration Convention<sup>14</sup>.

## **2.4 Factors to be considered in determining whether to accept a MAP request**

The factors which Revenue will consider in determining whether to accept requests for MAP assistance include:

- There is a DTA in place between Ireland and the foreign jurisdiction which contains the appropriate enabling provision and/or both countries are signatories to the EU Arbitration Convention; and
- The actions of one or both countries result or may result in taxation not in accordance with the provisions of the DTA and/or the provisions of Article 4 of the EU Arbitration Convention may not have been observed; and
- The Competent Authority receives a valid MAP request within the time limit specified in the applicable DTA and/or the time limit specified in Article 6 of the EU Arbitration Convention (refer to section 2.1 above); and
- The issue or objection raised by the taxpayer appears to be justified/well founded.

Revenue will notify the taxpayer in writing, where possible, within 30 days of receipt of the taxpayer's MAP request, whether their request has been accepted or rejected. Revenue will provide the taxpayer with the reasons for its decision where a request is rejected.

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<sup>14</sup> [Final Report on Improving the Functioning of the Arbitration Convention - JTPF/002/2015/EN Annex I - Revised Code of Conduct for the effective implementation of the Arbitration Convention.](#)



## 2.5 Stages of the MAP Process

### 2.5.1 First stage - unilateral

For MAP requests where Ireland is the jurisdiction raising the adjustment and a request is made to the Irish Competent Authority under the MAP article of a DTA and/or the EU Arbitration Convention, the Irish Competent Authority will first, if the request appears to be justified/well founded, attempt to resolve the matter unilaterally, without consulting the other Competent Authority.

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

For foreign initiated adjustments the same unilateral process will likely apply.

### 2.5.2 Second stage - bilateral

During the second, bilateral stage of the MAP process the Irish Competent Authority will endeavour to resolve the matter by mutual agreement with the Competent Authority of the other jurisdiction involved.

It is important to note that paragraph 2 of Article 25 of the MTC requires both Competent Authorities to negotiate with a view to the avoidance of double taxation. However, in the absence of mandatory binding arbitration<sup>15</sup> there is no guarantee that the case will be successfully resolved.

## 2.6 Interaction with domestic remedies

A taxpayer may request MAP assistance irrespective of the remedies provided by Ireland's domestic law.

A taxpayer can request MAP assistance from the Irish Competent Authority in situations where a decision has been rendered by an Irish court or the Appeal Commissioners. However, the Competent Authority cannot derogate in the MAP from a decision of the Appeal Commissioners or the highest court in which the matter is heard.

Revenue does not envisage the parallel undertaking of a MAP where the taxpayer is simultaneously pursuing judicial or administrative remedies. However, a taxpayer may submit a request for MAP assistance while judicial or administrative proceedings are ongoing. In such cases, the Competent Authority will generally request that the taxpayer agrees to the suspension of its judicial or administrative remedies pending the outcome of the MAP. If the taxpayer does not agree to suspend the administrative or judicial remedies, the Competent Authority will delay the MAP process pending the outcome of the administrative or judicial proceedings.

If the Competent Authorities cannot reach agreement through the MAP process or if the taxpayer rejects the agreement between the Competent Authorities, the taxpayer can then pursue any available domestic administrative or judicial remedies.

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<sup>15</sup> Refer to section 3.2.1 "Arbitration".

## 2.7 Other relevant guidance

**Relief from collections, interest and penalties** - Under Irish domestic legislation, there is no suspension of tax collection during the MAP process. However, tax collection may be suspended where, separately, the taxpayer has appealed against an assessment and has paid the undisputed amount of tax. Where applicable, interest and penalties will apply in accordance with the TCA 1997 and the Code of Practice for Revenue Audit<sup>16</sup>.

**Taxpayer-initiated foreign adjustments** - Access to MAP will be available for issues arising from a bona fide taxpayer-initiated foreign adjustment.

Ireland's domestic legislation prevents a taxpayer from claiming a deduction for the foreign adjustment in their tax return under self assessment<sup>17</sup>. Taxpayers are required to present such cases to Revenue for consideration by making a request for a correlative adjustment or a MAP request.

**Treaty anti-abuse and domestic anti-abuse provisions** - Where issues arise relating to the application of treaty anti-abuse provisions or the application of domestic anti-abuse provisions, Ireland will engage in consultation with the Competent Authority of the other Contracting State.

However, taxpayers should be aware that while Revenue will engage with the tax authority of the other relevant jurisdiction in relation to MAP requests which concern the application of treaty and/or domestic anti-abuse provisions, any claim of taxation not in accordance with the provisions of the convention may not necessarily be resolved and any double taxation may not be eliminated.

**Multiple years** - Taxpayers may submit MAP requests that span multiple years, subject to the time limit in the relevant DTA.

**Multilateral MAPs** - Where a MAP issue involves more than two tax jurisdictions, Revenue will consider entering into a series of bilateral MAPs as a way of dealing with such multilateral situations. Revenue will also consider requests by the taxpayer to conduct multilateral meetings with the other tax administrations, subject to the terms of the relevant DTAs and the agreement of the other tax administrations.

**Absence of Article 9(2) in a DTA** - Economic double taxation can arise as a result of the inclusion in the profits of an enterprise of one Contracting State, profits on which an enterprise of the other Contracting State has been charged to tax in that other State, under the equivalent of Article 9(1) of the MTC. Article 9(2) of the MTC provides for a correlative adjustment to be made to relieve the economic double taxation that could otherwise arise. Where a DTA does not include the equivalent of Article 9(2) of the MTC, Revenue regards such economic double taxation as being implicitly within the scope of the DTA by virtue of the inclusion of Article 9(1) and accordingly, Revenue is willing to consider a request in such cases for MAP or correlative adjustment.

**Items not covered by MAP** - No relief will be available, *inter alia*, for:

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<sup>16</sup> <http://www.revenue.ie/en/self-assessment-and-self-employment/code-of-practice-and-compliance/index.aspx>

<sup>17</sup> Section 81(2)(o), Taxes Consolidation Act 1997.

- Interest and penalties imposed by the other country; and
- Secondary/repatriation of profits adjustments implemented under the laws of the other country.

### 3 Resolution of a MAP request

There are a number of potential outcomes<sup>18</sup> in a MAP case, including:

- unilateral relief (refer to section 2.5.1 above);
- Competent Authority agreement for full or partial elimination of double taxation;
- no Competent Authority agreement is reached, including agreement to disagree;
- MAP request withdrawn by the taxpayer.

In line with BEPS Action 14<sup>19</sup>, Revenue is committed to seeking to resolve MAP cases within an average timeframe of 24 months of receipt of the complete MAP request. However, this is dependent on a number of factors such as the complexity of the case, the co-operation of the taxpayer and the number of rounds of negotiations required.

#### 3.1 Competent Authority agreement has been reached

Once a mutual agreement has been reached between Revenue and the other Competent Authority, Revenue will notify the taxpayer in writing of the agreed outcome, where possible within 30 days of the Competent Authority meeting. Revenue will request that the taxpayer confirm in writing whether it accepts the mutual agreement within 30 days of receipt of the letter from Revenue.

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

##### 3.1.1 Implementing agreement

If the taxpayer confirms in writing its acceptance of the mutual agreement, Revenue will give effect to the mutual agreement and seek to ensure its implementation without delay. In cases where a refund is due to the taxpayer, the taxpayer should contact its local tax District to begin the process of obtaining the refund. The taxpayer will be required to submit revised tax computations for the affected accounting periods to Revenue.

In cases where a refund is due to the taxpayer, to the extent that Revenue does not process a refund of tax arising from the mutual agreement within 93 days of the receipt from a taxpayer of a valid claim for repayment of tax, interest will become due and payable in accordance with the provisions of the TCA 1997.

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<sup>18</sup> <http://www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf> (refer to "MAP Statistics Reporting Framework", paragraph 12 for a list of potential outcomes).

<sup>19</sup> Action 14: 2015 Final Report, Making Dispute Resolution Mechanisms More Effective

## 3.2 Competent Authority agreement has not been reached

In the event that Revenue is unable to reach agreement with the Competent Authority of the foreign tax administration and in the absence of mandatory binding arbitration, Revenue will notify the taxpayer in writing, where possible within 30 days of the Competent Authority meeting, setting out why agreement could not be reached. Except for cases involving arbitration (refer to section 3.2.1 below), Revenue is not obliged to engage in further discussions with the other Competent Authority where Revenue or the other Competent Authority believes that agreement cannot be reached.

### 3.2.1 Arbitration

The competent authorities will 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 under the EU Arbitration Convention or the relevant DTA.

#### 3.2.1.1 MAP request submitted under the EU Arbitration Convention

Where taxpayers have submitted a valid claim under the EU Arbitration Convention, the Competent Authorities have 2 years to reach agreement on the case. The two-year period starts on the later of the following dates: (i) the date of the tax assessment notice, i.e. a final decision of the tax administration on the additional income, or equivalent; (ii) the date on which the Competent Authority receives the request and the minimum information as stated under Section 7.6(a) of the Revised Code of Conduct for the effective implementation of the Arbitration Convention<sup>20</sup>.

If agreement is not reached within this timeframe, an advisory commission (arbitration panel) is established to review the case (unless both Competent Authorities by mutual agreement and with the agreement of the taxpayer(s) concerned waive the two year time limit). Both Competent Authorities agree on the composition of the advisory commission. The advisory commission will deliver its decision not more than 6 months after the date the matter was referred to it. Both Competent Authorities must then act within 6 months in accordance with the decision of the advisory commission unless both Competent Authorities reach an alternative agreement to eliminate double taxation. If the Competent Authorities do not reach an alternative agreement within 6 months of the advisory commission's decision, they will be obliged to implement the advisory commission's decision.

As the Irish Competent Authority cannot derogate from a decision of the Appeal Commissioners or an Irish court, the advisory commission cannot be established until the taxpayer has allowed the time limit for appeal to expire or withdraws any such appeal before a decision has been reached<sup>21</sup>.

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<sup>20</sup> [Final Report on Improving the Functioning of the Arbitration Convention - JTPF/002/2015/EN Annex I - Revised Code of Conduct for the effective implementation of the Arbitration Convention](#)

<sup>21</sup> EU Arbitration Convention, Article 7(3)

### **3.2.1.2 MAP request submitted under a DTA with an arbitration provision**

MAP arbitration provisions are currently included in four of Ireland's DTAs (Canada, Israel, Mexico and the US) but are subject to an exchange of notes to establish procedures and, in some cases, to bring MAP arbitration into effect. Ireland intends to adopt mandatory binding arbitration provisions when the Multilateral Instrument ("MLI"), developed by the OECD, is ratified in the Finance Act 2017.

The MLI arbitration provisions will only apply, however, in treaties where Ireland's treaty partner has also adopted the provisions and ratified the MLI. Taxpayers should consult the relevant DTA and the relevant MLI provisions (following ratification by both treaty partners) when making a MAP request.

## **3.3 MAP request withdrawn by the taxpayer**

Where a taxpayer wishes to withdraw a MAP request the taxpayer is required to provide the Competent Authority (to which it submitted the MAP request) with a notification, in writing, of the withdrawal of its MAP request, without delay. This notification should include the reason for the withdrawal (for example resolution of the issue through remedies provided by the domestic law of a Contracting State).

## **4 Correlative adjustments**

A correlative adjustment is defined as an adjustment of profits under the terms of a DTA which Ireland has entered into with another country<sup>22</sup>. The purpose of a correlative adjustment is to provide the Irish taxpayer with relief from double taxation resulting from an adjustment initiated by the foreign tax administration and accepted by the taxpayer. The term 'correlative adjustment' is similar to the term 'corresponding adjustment' used by the OECD<sup>23</sup>. In order to make a claim for a correlative adjustment, there must be a DTA in place between Ireland and the foreign jurisdiction which contains the appropriate enabling provision.

Correlative adjustment cases may arise where a taxpayer settles a dispute unilaterally with the foreign tax administration without involving the Irish Competent Authority, i.e. the taxpayer has agreed to the adjustment that was raised by the foreign tax administration and has paid the additional foreign tax resulting from the foreign-initiated adjustment. Where a taxpayer subsequently makes a claim to Revenue for a correlative adjustment, such claims are treated separately by Revenue to a request for MAP assistance. This is on the basis that they do not involve the negotiation of the MAP request between two Competent Authorities.

Revenue will consider requests for correlative adjustments in accordance with the DTA provision equivalent to Article 9(2) of the MTC. As mentioned in Section 2.7 above, where a DTA does not include an equivalent of Article 9(2), Revenue regards economic double taxation as being implicitly within the scope of the DTA by virtue of

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<sup>22</sup> Section 865(1)(a) Taxes Consolidation Act 1997.

<sup>23</sup> *OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations* (2017), Glossary defines a "corresponding adjustment" as "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".

the inclusion of an equivalent of Article 9(1) of the MTC and accordingly, Revenue is willing to consider a request for a correlative adjustment.

Taxpayers should note that Ireland's domestic legislation prevents the claiming of a deduction for the foreign adjustment in a tax return under self assessment<sup>24</sup> and that taxpayers are required to present correlative adjustment claims to Revenue.

Requests for correlative adjustments should be sent to the Revenue office dealing with the taxpayer's affairs<sup>25</sup>. A copy of the submission should also be provided to the Transfer Pricing Branch of the International Tax Division (see Appendix 1 for contact details).

Taxpayers should refer to Appendix 3 for details of the information and documentation required to be submitted with a request for a correlative adjustment.

Revenue will review the case and will make a correlative adjustment to the profits of the affected company to the extent it considers the adjustment to be arm's length. As a claim for correlative adjustment represents a one-sided review, based on the facts and circumstances of the case, Revenue may not agree with the appropriateness of the whole or part of the primary adjustment and double taxation may therefore arise. Where, following the review, Revenue agrees to the whole or part of a correlative adjustment confirmation will need to be obtained from the other jurisdiction by Revenue that tax has been paid on that amount<sup>26</sup>.

To the extent that a refund is due to the taxpayer, the taxpayer will be required to submit revised tax computations for the affected accounting periods to Revenue.

In making a claim it is important to be aware that no relief will be available, *inter alia*, for:

- Interest and penalties imposed by the other country; and
- Secondary adjustments or repatriation of profits adjustments implemented under the laws of the other country.

If any part of the correlative adjustment claim is not granted by Revenue, the taxpayer may request MAP assistance from the Revenue Competent Authority provided the request is within the time limit for a MAP claim as set out in Section 2.1.1 above. Taxpayers should note that they must comply with the time limit set out in the relevant DTA.

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<sup>24</sup> Section 81(2)(o) Taxes Consolidation Act 1997.

<sup>25</sup> [Revenue Contact Details](#)

<sup>26</sup> Section 865(1)(b)(iii) Taxes Consolidation Act 1997.

## **Appendix 1: Contact details for submitting a MAP request under a DTA and/or the EU Arbitration Convention**

### **Transfer pricing and attribution of profits to a permanent establishment MAP requests**

Requests for MAP assistance that relate to matters of transfer pricing or the attribution of profits to a permanent establishment are dealt with by the Transfer Pricing Branch of the International Tax Division and should be addressed to:

Director, Transfer Pricing Branch  
International Tax Division  
Office of the Revenue Commissioners  
Dublin Castle  
D02 F342  
Dublin 2, Ireland  
Tel: +353 1 858 9377 or +353 1 858 9712  
Fax: + 353 1 679 3314  
Email: [transferpricing@revenue.ie](mailto:transferpricing@revenue.ie)

### **Non-transfer pricing MAP requests**

Requests for non-transfer pricing MAP cases are dealt with by the Tax Treaties Branch of the International Tax Division and should be addressed to:

Director, Tax Treaties Branch  
International Tax Division  
Office of the Revenue Commissioners  
Dublin Castle  
D02 HW86  
Dublin 2, Ireland  
Tel: +353 1 858 9889 or +353 1 858 9884  
Email: [taxtreaties@revenue.ie](mailto:taxtreaties@revenue.ie)

## **Appendix 2: Information and documentation required to be submitted with a request for MAP assistance**

Information and documentation submitted with a request for MAP assistance should be provided in three hard copies, in one of the official languages of Ireland (Irish or English). Alternatively, taxpayers may submit requests for MAP assistance using Revenue's MyEnquiries<sup>27</sup> facility. Where taxpayers do not have access to MyEnquiries and/or for larger submissions, taxpayers may use the secure Revenue File Transfer System<sup>28</sup> (RFTS).

For MAP requests relating to transfer pricing and the attribution of profits to a permanent establishment, the information should be sent to the Director of the Transfer Pricing Branch. For non-transfer pricing MAP requests, the information should be sent to the Director of the Tax Treaties Branch. Refer to Appendix 1 of the document for the relevant contact information.

The information that must be included with a request for a MAP presented under either a DTA or the EU Arbitration Convention is set out below<sup>29</sup>:

- i. Identity (such as name, address, tax identification number or birth date, contact details) of the taxpayer(s) covered in the MAP request and of the other parties to the relevant transaction(s).
- ii. Details of the relationship between the taxpayer and the other parties to the relevant transaction(s).
- iii. The legal basis for the request i.e. the specific tax treaty and/or EU Arbitration Convention including the provision(s) of the specific article(s) which the taxpayer considers is not being correctly applied by either one or both Contracting States (and to indicate which state and the contact details of the relevant person(s) in that state).
- iv. Facts and circumstances of the case (including any documentation to support these facts, the taxation year(s) or period(s) involved and the amounts involved, in both the local currency and foreign currency).
- v. An analysis of the issues involved (supported with relevant documentation, for example, tax assessment notices, tax audit report or equivalent leading to the alleged double taxation, evidence of tax paid (where applicable)), including:
  - a. the taxpayers interpretation of the application of the specific treaty provisions(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 States; and/or

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<sup>27</sup> [MyEnquiries is a structured online contact facility that allows customers to securely send and receive correspondence to and from Revenue instead of using email.](#)

<sup>28</sup> Taxpayers wishing to use the RFTS can contact Revenue (see Appendix 1 of the document for contact details) to obtain further information on using this system.

<sup>29</sup> Where applicable, taxpayers should ensure that a statement authorising a person to make a MAP request on their behalf is provided.



- b. an explanation by the enterprise why it considers that the principles set out in Article 4 of the EU Arbitration Convention have not been observed.
- vi. The request should state whether the issue(s) presented in the MAP request have been previously dealt with, for example, in an advance ruling, APA, settlement agreement or by any tax tribunal or court. This includes details of any appeals and litigation procedures initiated by the taxpayer or the other parties to the relevant transactions. If yes, a copy of these rulings, agreements or any court decisions concerning the case should be provided<sup>30</sup>.
- vii. Any other information or documentation requested by the Competent Authority. Responses to requests for additional information should be complete and submitted within the time stipulated in the request for such information or documentation.
- viii. An undertaking that the enterprise shall respond as completely and quickly as possible to all reasonable and appropriate requests made by a Competent Authority and have documentation at the disposal of the Competent Authorities.
- ix. Confirmation of whether the MAP request was also submitted to the Competent Authority of the other Contracting State – 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. A copy of that submission (including all documentation filed with that submission) should also be provided unless the content of both MAP submissions are the same.

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<sup>30</sup> Where the taxpayer is pursuing a tax appeal in Ireland refer to Section 2.6 for further guidance.

### **Appendix 3: Information and documentation required to be submitted with a request for a correlative adjustment<sup>31</sup>**

To enable Revenue to examine the merits of a claim for correlative adjustment, taxpayers should:

- i. Quote the legal basis for the claim i.e. the relevant article(s) in Ireland's double taxation agreements (including a statement as to why the agreement quoted is the relevant agreement);
- ii. Set out how the relevant enterprises are associated;
- iii. Explain what the transfer pricing policy was prior to the audit of the associated enterprise in the other country (attaching a copy of all documentation evidencing that policy e.g. intercompany legal agreements, transfer pricing study, benchmarking study, economist report, and other expert advice);
- iv. Set out those elements of the transfer pricing policy that the other country did not agree with and why, and how the associated enterprise sought to rebut the other country's findings, including copies of all relevant correspondence;
- v. Set out how the final agreement with the other country was arrived at to include the following details:
  - a. An explanation of the final adjustment;
  - b. The quantum of the adjustment agreed and the financial years covered;
  - c. An explanation as to how the original transfer pricing policy was not arm's length and how the final adjustment is arm's length in accordance with OECD principles, including evidence supporting the arm's length nature of the adjustment;
  - d. The process by which agreement was reached including an account (if relevant) of the considerations leading to acceptance of the adjustment as opposed to litigation or MAP;
  - e. A copy of the settlement agreement; and
  - f. A copy of the assessments issued by the tax authority of the other country.
- vi. State how effect was given to the adjustment in practice including an explanation of the accounting treatment;
- vii. State clearly whether any portion of the adjustment relates to secondary adjustments such as imputed or notional interest on intercompany balances;

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<sup>31</sup> Where a taxpayer has settled a case unilaterally with the foreign tax administration.

- viii. State clearly whether any portion of the adjustment relates to interest on unpaid taxes or statutory penalties;
- ix. State whether any previous or subsequent years are to be audited where there is a prospect of similar issues arising; and
- x. State whether there are audits being undertaken by other countries that might affect the profits of the Irish associated enterprise.

As a claim for correlative adjustment is essentially a one sided review of a matter concerning potential double taxation, in order to ensure an efficient and expedient review process, Revenue expects to be provided with all relevant information as was provided to the tax authority in the other country.