

Gibraltar Dispute Resolution Profile

(Last updated: 14.10.2021)

General Information

- **Gibraltar tax treaties are available at:**

<https://www.gibraltar.gov.gi/income-tax-office>

- **MAP request should be made to:**

Commissioner of Income Tax
Competent Authority
Ministry of Finance – H.M. Government of Gibraltar
Income Tax Office
St. Jago's Stone Block
331 Main Street
GX11 1AA
Gibraltar

Email: competentauthority@gibraltar.gov.gi

Telephone: +350 75260

- **APA request should be made to:**

Gibraltar has no specific mechanism for the issue of advance pricing arrangements.

Gibraltar Dispute Resolution Profile – Preventing Disputes

| s/n | | Response | Detailed explanation | Where publicly available information and guidance can be found |
|-------------------------------|--|---------------------------|--|---|
| A. Preventing Disputes | | | | |
| 1. | Are agreements reached by your competent authority to resolve difficulties or doubts arising as to the interpretation or application of your tax treaties in relation to issues of a general nature which concern, or which may concern, a category of taxpayers published? | See detailed explanation. | <p>Publication of the outcomes of MAP cases is decided on a case by case basis.</p> <p>The Competent Authority in Gibraltar will not publish if the category comprises a small number of taxpayers or publication may lead to the taxpayers' identity.</p> | <p>The outcomes of MAP requests would be published online at: https://www.gibraltar.gov.gi/income-tax-office.</p> <p>Given that Gibraltar has not received any MAP requests to date, no outcomes of MAP cases have been published.</p> |
| 2. | Are bilateral APA programmes implemented? If yes: | No | See General Information section above. Gibraltar has no specific bilateral APA mechanism. | - |
| a. | <ul style="list-style-type: none"> Are roll-back of APAs provided for in the bilateral APA programmes? | N/A | - | - |
| b. | <ul style="list-style-type: none"> Are there specific timeline for the filing of an APA request? | N/A | - | - |
| c. | <ul style="list-style-type: none"> Are rules, guidelines and procedures on how taxpayers can access and use bilateral APAs, including the specific information and documentation that should be submitted in a taxpayer's request for bilateral APA assistance, publicly available? | N/A | - | - |
| d. | <ul style="list-style-type: none"> Are there any fees charged to taxpayers for a bilateral APA request? | N/A | - | - |

Gibraltar Dispute Resolution Profile – Preventing Disputes

| s/n | | Response | Detailed explanation | Where publicly available information and guidance can be found |
|-----|---|----------|---|--|
| e. | <ul style="list-style-type: none"> Are statistics relating to bilateral APAs publicly available? | N/A | - | - |
| 3. | Is training provided to your officials involved in the auditing /examination of taxpayers to ensure that any assessments made by them are in accordance with the provisions of your tax treaties? | Yes | <p>Training will be provided to relevant officials on the job and on an ad-hoc basis subject to requirements.</p> <p>The Income Tax Office continues to seek to redesign its training programmes to include more structured training on cross-border matters for those officers involved in tax assessments that have a cross-border element.</p> | Internal training materials are not published publicly. |
| 4. | Is other information available on preventing tax treaty-related disputes? | No | No other information has been made available. Gibraltar has not had a tax-treaty related dispute. | - |

Notes:

1. An APA is 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 the transfer pricing for those transactions over a fixed period of time”. (see definition of APA in the *OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations* (“Transfer Pricing Guidelines”)).

2. Situations may arise in which the issues resolved through an APA are relevant with respect to previous filed tax years not included within the original scope of the APA. The concept of “roll-back” is further elaborated in paragraph 4.136 of Section F (Advance pricing arrangement) of Chapter IV of the Transfer Pricing Guidelines and in paragraph 69 of Section D.4.2 (Possible retrospective application (“Roll back”)) of the Annex to Chapter IV (Guidelines for Conducting Advance Pricing Arrangements under the Mutual Agreement Procedure (“MAP APAs”)) of the Transfer Pricing Guidelines. Simply put, the “roll-back” of the APA is understood to mean that the outcome of the APA is applied to previous filed tax years not included within the original scope of the APA.

Gibraltar Dispute Resolution Profile – Availability and access to MAP

| s/n | | Response | Detailed explanation | Where publicly available information and guidance can be found |
|--|---|---------------------------|--|--|
| B. Availability and Access to MAP | | | | |
| 5. | Are transfer pricing cases covered within the scope of MAP? | Yes | Gibraltar has presently signed one DTA with the UK. This DTA includes the model wording under paragraph 2 or Article 9. This DTA provides for MAP in transfer pricing cases. This MAP profile will be updated as Gibraltar's treaty network is expanded. | Gibraltar guidance on MAP is available at: https://www.gibraltar.gov.gi/income-tax-office . |
| 6. | Are issues relating to the application of treaty anti-abuse provision covered within the scope of MAP? | See detailed explanation. | Yes, to the extent that the matter is permitted/covered by the relevant DTA. | Gibraltar guidance on MAP is available at: https://www.gibraltar.gov.gi/income-tax-office . |
| 7. | Are issues relating to the application of domestic anti-abuse provision covered within the scope of MAP? | See detailed explanation. | Yes, to the extent that the matter is permitted/covered by the relevant DTA. | Gibraltar guidance on MAP is available at: https://www.gibraltar.gov.gi/income-tax-office . |
| 8. | Are issues where there is already an audit settlement between the tax authority and the taxpayer covered within the scope of MAP? | Yes | - | Gibraltar guidance on MAP is available at: https://www.gibraltar.gov.gi/income-tax-office . |
| 9. | Are double taxation cases resulting from bona fide taxpayer initiated foreign adjustments covered within the scope of MAP? | Yes | - | Gibraltar guidance on MAP is available at: https://www.gibraltar.gov.gi/income-tax-office . |
| 10. | Are there any other treaty related issues not covered under s/n 5 to 9 which are not within the scope of MAP? | No | - | - |

Gibraltar Dispute Resolution Profile – Availability and access to MAP

| s/n | | Response | Detailed explanation | Where publicly available information and guidance can be found |
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| 11. | Are taxpayers allowed to request MAP assistance in cases where the taxpayer has sought to resolve the issue under dispute via the judicial and administrative remedies provided by the domestic law of your jurisdiction? | Yes | - | Gibraltar guidance on MAP is available at: https://www.gibraltar.gov.gi/income-tax-office . |
| 12. | Are taxpayers allowed to request for MAP assistance in cases where the issue under dispute has already been decided via the judicial and administrative remedies provided by the domestic law of your jurisdiction? | Yes | - | Gibraltar guidance on MAP is available at: https://www.gibraltar.gov.gi/income-tax-office . |
| 13. | Are rules, guidelines and procedures on how taxpayers can access and use MAP, including the specific information and documentation that should be submitted in a taxpayer's request for MAP assistance, publicly available? | Yes | - | Gibraltar guidance on MAP is available at: https://www.gibraltar.gov.gi/income-tax-office . |
| 14. | Are there specific timeline for the filing of a MAP request? | Yes | The timeline would be in accordance with the provisions of the relevant treaty. | Gibraltar guidance on MAP is available at: https://www.gibraltar.gov.gi/income-tax-office . |
| 15. | Are guidance on multilateral MAPs publicly available? | N/A | Gibraltar does not have any treaties which permit multilateral MAPs. | Gibraltar guidance on MAP is available at: https://www.gibraltar.gov.gi/income-tax-office . |
| 16. | Are tax collection procedures suspended during the period a MAP case is pending? | See detailed explanation. | There is no automatic suspension of tax collection during the MAP process. A taxpayer may request postponement of the tax due | Gibraltar guidance on MAP is available at: https://www.gibraltar.gov.gi/income-tax-office . |

Gibraltar Dispute Resolution Profile – Availability and access to MAP

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| | | | subject to agreement by the Commissioner of Income Tax (Competent Authority) in accordance with the provisions and conditions of the domestic law. | |
| 17. | Are there any fees charged to taxpayers for a MAP request? | No | - | - |
| 18. | Is there any other information available on availability and access to MAP? | Yes | - | Gibraltar guidance on MAP is available at: https://www.gibraltar.gov.gi/income-tax-office . |

Gibraltar Dispute Resolution Profile – Resolution of MAP cases

| s/n | | Response | Detailed explanation | Where publicly available information and guidance can be found |
|-----------------------------------|---|---------------------------|---|--|
| C. Resolution of MAP Cases | | | | |
| 19. | Are there any model timeframes for the steps taken by your competent authority from the receipt of a MAP case to the resolution of the case provided to taxpayers? | Yes | The general timeframe for the resolution of MAP cases is within 2 years. | Gibraltar guidance on MAP is available at: https://www.gibraltar.gov.gi/income-tax-office . |
| 20. | Are statistics relating to the time taken to resolve MAP cases publicly available? | No | Gibraltar has not received any MAP requests. Notwithstanding, Gibraltar will be submitting MAP statistics to the OECD as required. | - |
| 21. | Is interest or penalties resulting from adjustments made pursuant to a MAP agreement waived or dealt with as part of the MAP procedure? | See detailed explanation. | Any penalties or surcharges may be mitigated depending on the facts of the case. | Gibraltar guidance on MAP is available at: https://www.gibraltar.gov.gi/income-tax-office . |
| 22. | Are the roles and responsibility of the MAP office publicly available, for example, is the mission statement of the MAP office available in the <i>annual</i> report of the organisation? | See detailed explanation. | Gibraltar has not received any MAP requests. No designated MAP office has yet been implemented. The need for a dedicated unit will be assessed as the jurisdiction expands its treaty network and monitors the volume of MAP requests. | Gibraltar guidance on MAP is available at: https://www.gibraltar.gov.gi/income-tax-office . |

Gibraltar Dispute Resolution Profile – Resolution of MAP cases

| s/n | | Response | Detailed explanation | Where publicly available information and guidance can be found |
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| 23. | <p>Is MAP arbitration a mechanism currently available for the resolution of tax treaty related disputes in any of your tax treaties?</p> <p>If not:</p> | Yes | <p>Arbitration is included in Gibraltar’s DTA with the UK.</p> <p>The inclusion of such a provision in future DTAs negotiated and concluded by Gibraltar would be discussed with any prospective treaty partners.</p> <p>This MAP profile will be updated accordingly.</p> | <p>Treaties are published at:</p> <p>https://www.gibraltar.gov.gi/income-tax-office.</p> |
| a. | <ul style="list-style-type: none"> Are there any legal limitations in your domestic law (for example in your constitution) to include MAP arbitration in your tax treaties? | No | - | - |
| b. | <ul style="list-style-type: none"> Does your treaty policy allow you to include MAP arbitration in your tax treaties? | Yes | - | - |
| 24. | <p>Is the explanation of the relationship between the MAP and domestic law administrative and judicial remedies publicly available?</p> <p>If yes:</p> | Yes | <p>An explanation is available in Gibraltar’s MAP guidance.</p> | <p>Gibraltar guidance on MAP is available at:</p> <p>https://www.gibraltar.gov.gi/income-tax-office.</p> |
| a. | <ul style="list-style-type: none"> Does the guidance specifically address whether the competent authority considers that it is legally bound to follow a domestic court decision in the MAP or will not deviate from a domestic court decision as a matter of administrative policy or practice? | Yes | See explanation above. | <p>Gibraltar guidance on MAP is available at:</p> <p>https://www.gibraltar.gov.gi/income-tax-office.</p> |

Gibraltar Dispute Resolution Profile – Resolution of MAP cases

| s/n | | Response | Detailed explanation | Where publicly available information and guidance can be found |
|-----|--|----------|--|---|
| 25. | Are taxpayers allowed to request for multi-year resolution through the MAP of recurring issues with respect to filed tax years? | Yes | To the extent that the matter is permitted or covered by the respective treaty. | Gibraltar guidance on MAP is available at: https://www.gibraltar.gov.gi/income-tax-office . |
| 26. | Do all your jurisdiction's tax treaties contain a provision which would oblige your jurisdiction to make corresponding adjustments or to grant access to the MAP with respect to the economic double taxation that may otherwise result from a primary transfer pricing adjustment (i.e. is paragraph 2 of Article 9 of the OECD Model Tax Convention or the UN Model Double Taxation Convention included in all of your jurisdiction's tax treaties)? | Yes | <p>Gibraltar has presently signed one DTA with the UK. This DTA includes the model wording under paragraph 2 of Article 9. This DTA provides for MAP in transfer pricing cases.</p> <p>The inclusion of such a provision in future DTAs negotiated and concluded by Gibraltar would be discussed with any prospective treaty partners.</p> | Gibraltar guidance on MAP is available at: https://www.gibraltar.gov.gi/income-tax-office . |
| 27. | Is there any other information available on resolution of MAP cases? | Yes | - | Gibraltar guidance on MAP will be available at: https://www.gibraltar.gov.gi/income-tax-office . |

Gibraltar Dispute Resolution Profile – Implementation of MAP Agreements

| s/n | | Response | Detailed explanation | Where publicly available information and guidance can be found |
|--|--|---------------------------|---|--|
| D. Implementation of MAP Agreements | | | | |
| 28. | Where the agreement reached by your competent authority through the MAP process leads to additional tax to be paid by your taxpayer, is there publicly available information on the timeframe the taxpayer could expect its tax position to be amended to reflect the agreement reached by the competent authority and/or for the additional tax to be paid? | See detailed explanation. | <p>Gibraltar's MAP guidance provides that agreement will be implemented without delay.</p> <p>If additional tax becomes payable as a result of a MAP adjustment, the tax due will be payable in accordance with domestic tax law. The due date(s) for payment will be stipulated in the assessment notice. Payment options may be negotiated with the Income Tax Office if difficulties are encountered in making payment in full by the due date(s).</p> | Gibraltar guidance on MAP is available at: https://www.gibraltar.gov.gi/income-tax-office . |
| 29. | Where the agreement reached by your competent authority through the MAP process leads to a refund of the tax due or paid by your taxpayer, are there publicly available information on the timeframe the taxpayer could expect its tax position to be amended to reflect the agreement reached by the competent authority and/or for a refund of the tax paid? | Yes | See explanation above. | Gibraltar guidance on MAP is available at: https://www.gibraltar.gov.gi/income-tax-office . |

Gibraltar Dispute Resolution Profile – Implementation of MAP Agreements

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| 30. | Are all mutual agreements reached through MAP implemented notwithstanding any time limits in your domestic law? | Yes | - | - |
| 31. | Is there any other information available on the implementation of MAP agreements? | No | - | - |