

**OECD/G20 Base Erosion and Profit Shifting
Project**



Making Dispute Resolution More Effective – MAP Peer Review Report, New Zealand (Stage 1)

INCLUSIVE FRAMEWORK ON BEPS: ACTION 14

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Foreword

The integration of national economies and markets has increased substantially in recent years, putting a strain on the international tax rules, which were designed more than a century ago. Weaknesses in the current rules create opportunities for base erosion and profit shifting (BEPS), requiring bold moves by policy makers to restore confidence in the system and ensure that profits are taxed where economic activities take place and value is created.

Following the release of the report *Addressing Base Erosion and Profit Shifting* in February 2013, OECD and G20 countries adopted a 15-point Action Plan to address BEPS in September 2013. The Action Plan identified 15 actions along three key pillars: introducing coherence in the domestic rules that affect cross-border activities, reinforcing substance requirements in the existing international standards, and improving transparency as well as certainty.

After two years of work, measures in response to the 15 actions were delivered to G20 Leaders in Antalya in November 2015. All the different outputs, including those delivered in an interim form in 2014, were consolidated into a comprehensive package. The BEPS package of measures represents the first substantial renovation of the international tax rules in almost a century. Once the new measures become applicable, it is expected that profits will be reported where the economic activities that generate them are carried out and where value is created. BEPS planning strategies that rely on outdated rules or on poorly co-ordinated domestic measures will be rendered ineffective.

Implementation is now the focus of this work. The BEPS package is designed to be implemented via changes in domestic law and practices, and in tax treaties. With the negotiation of a multilateral instrument (MLI) having been finalised in 2016 to facilitate the implementation of the treaty related BEPS measures, over 80 jurisdictions are covered by the MLI. The entry into force of the MLI on 1 July 2018 paves the way for swift implementation of the treaty related measures. OECD and G20 countries also agreed to continue to work together to ensure a consistent and co-ordinated implementation of the BEPS recommendations and to make the project more inclusive. Globalisation requires that global solutions and a global dialogue be established which go beyond OECD and G20 countries.

A better understanding of how the BEPS recommendations are implemented in practice could reduce misunderstandings and disputes between governments. Greater focus on implementation and tax administration should therefore be mutually beneficial to governments and business. Proposed improvements to data and analysis will help support ongoing evaluation of the quantitative impact of BEPS, as well as evaluating the impact of the countermeasures developed under the BEPS Project.

As a result, the OECD established the Inclusive Framework on BEPS, bringing all interested and committed countries and jurisdictions on an equal footing in the Committee on Fiscal Affairs and all its subsidiary bodies. The Inclusive Framework, which already

has more than 115 members, is monitoring and peer reviewing the implementation of the minimum standards as well as completing the work on standard setting to address BEPS issues. In addition to BEPS members, other international organisations and regional tax bodies are involved in the work of the Inclusive Framework, which also consults business and the civil society on its different work streams.

This report was approved by the Inclusive Framework on BEPS on 14 August 2018 and prepared for publication by the OECD Secretariat.

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Abbreviations and acronyms

APA	Advance Pricing Arrangement
BEPS	Base Erosion and Profit Shifting
FTA	Forum on Tax Administration
MAP	Mutual Agreement Procedure
OECD	Organisation for Economic Co-operation and Development

Executive summary

New Zealand has a modest tax treaty network with almost 50 tax treaties. New Zealand has an established MAP programme and has relatively little experience with resolving MAP cases. It has a small MAP inventory, with a small number of new cases submitted each year and ten cases pending on 31 December 2017. Of these cases, 50% concern allocation/attribution cases. Overall New Zealand meets most of the elements of the Action 14 Minimum Standard. Where it has deficiencies, New Zealand is working to address them.

All of New Zealand's tax treaties contain a provision relating to MAP. Those treaties mostly follow paragraphs 1 through 3 of Article 25 of the *Model Tax Convention on Income and on Capital 2014 (OECD Model Tax Convention, OECD, 2015)*. Its treaty network is largely consistent with the requirements of the Action 14 Minimum Standard, except mainly for the fact that:

- Almost 50% of its tax treaties do not contain the equivalent to Article 25(3), second sentence of the OECD Model Tax Convention (OECD, 2015) stating that the competent authorities may consult together for the elimination of double taxation for cases not provided for in the tax treaty.
- Approximately 40% of its tax treaties neither contain a provision stating that mutual agreements shall be implemented notwithstanding any time limits in domestic law (which is required under Article 25(2), second sentence), nor the alternative provisions for Article 9(1) and Article 7(2) to set a time limit for making transfer pricing adjustments.
- Approximately 25% of its tax treaties do not contain the equivalent of Article 25(1) to the OECD Model Tax Convention (OECD, 2015), whereby the majority of these treaties do not contain the equivalent of Article 25(1), first sentence, as it read prior to the adoption of the *Making Dispute Resolution Mechanisms More Effective, Action 14 – 2015 Final Report (Action 14 final report, OECD, 2015b)* since they do not allow taxpayers to submit a MAP request to the state of which it is a national, where its case comes under the non-discrimination provision.

In order to be fully compliant with all four key areas of an effective dispute resolution mechanism under the Action 14 Minimum Standard, New Zealand needs to amend and update a significant number of its tax treaties. In this respect, New Zealand signed the Multilateral Instrument, through which a number of its tax treaties will potentially be modified to fulfil the requirements under the Action 14 Minimum Standard. Where treaties will not be modified, upon entry into force of this Multilateral Instrument, New Zealand reported that it intends to update its tax treaties to be compliant with the requirements under the Action 14 Minimum Standard via bilateral negotiations, giving priority to pending negotiations or with treaty partners with whom it has MAP cases. Furthermore, New Zealand opted for part VI of the Multilateral Instrument concerning the introduction of a mandatory and binding arbitration provision in tax treaties.

New Zealand meets the Action 14 Minimum Standard concerning the prevention of disputes. It has in place a bilateral APA programme. This APA programme also enables taxpayers to request rollbacks of bilateral APAs and such rollbacks are granted in practice.

New Zealand meets almost all requirements regarding the availability and access to MAP under the Action 14 Minimum Standard. It provides access to MAP in all eligible cases although it has since 1 January 2016 not received any MAP request concerning the application of anti-abuse provisions or where taxpayers and the tax authorities have already entered into an audit settlement. It does not have in place a documented bilateral consultation or notification process for those situations in which its competent authority considers the objection raised by taxpayers in a MAP request as not justified, although it intends to introduce such a process shortly. New Zealand also has clear guidance on the availability of MAP and how it applies this procedure in practice.

Concerning the average time needed to close MAP cases, the MAP statistics for New Zealand for the period 2016-17 are as follows:

2016-17	Opening inventory 1/1/2016	Cases started	Cases closed	End inventory 31/12/2017	Average time to close cases (in months)*
Attribution/allocation cases	3	9	7	5	14.48
Other cases	5	18	18	5	10.75
Total	8	27	25	10	11.79

* The average time taken for resolving MAP cases for post-2015 cases follows the MAP Statistics Reporting Framework. For computing the average time taken for resolving pre-2016 MAP cases, New Zealand used as a start date five weeks from the receipt of the MAP request, where this request has been initiated in New Zealand, otherwise the date of notification of the MAP request from the other competent authority, and, as the end date, the date of the letter from New Zealand's competent authority informing the taxpayer of the final outcome of the MAP request.

The number of cases New Zealand closed in 2016 or 2017 is roughly the same as the number of all new cases started in 2016 and 2017. Its MAP inventory as per 31 December 2017 slightly increased as compared to its inventory as per 1 January 2016. However, New Zealand closed all of its pre-2016 MAP cases and all of its post-2015 MAP cases that started in 2016. Consequently, its MAP inventory as per 31 December 2017 only consists of cases started in 2017. In addition, in 2016 or 2017, New Zealand's competent authority closed MAP cases on average within a timeframe of 24 months (which is the pursued average for closing MAP cases received on or after 1 January 2016), as the average time necessary was 11.79 months, following which New Zealand's competent authority is considered to be adequately resourced.

Furthermore, New Zealand meets all the other requirements under the Action 14 Minimum Standard in relation to the resolution of MAP cases. New Zealand's competent authority operates fully independently from the audit function of the tax authorities and adopts a pragmatic approach to resolve MAP cases in an effective and efficient manner. Its organisation is adequate and the performance indicators used are appropriate to perform the MAP function.

Lastly, New Zealand also meets the Action 14 Minimum Standard as regards the implementation of MAP agreements. New Zealand monitors the implementation of MAP agreements. Even though New Zealand has implemented all MAP agreements thus far and no problems have surfaced throughout the process, its domestic statute of limitation bears the risk that not all MAP agreements can be implemented where the applicable tax treaty does not contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015).

Introduction

Available mechanisms in New Zealand to resolve tax treaty-related disputes

New Zealand has entered into 48 tax treaties on income (and/or capital), 46 of which are in force.¹ These 48 treaties apply to 48 jurisdictions. All but one of these treaties provide for a mutual agreement procedure for resolving disputes on the interpretation and application of the provisions of the tax treaty. In addition, two of the 48 treaties provide for an arbitration procedure as a final stage to the mutual agreement procedure.²

In New Zealand the competent authority function to conduct MAP is delegated to the Commissioner of Inland Revenue. This function is sub-mandated to the International Revenue Strategy department, which is a sub-department of the Business Planning and Integration department. The competent authority of New Zealand currently employs approximately 13 full time employees, including two managers. The authority to handle MAP cases concerns both attribution/allocation cases and other MAP cases.

New Zealand has not issued specific guidance pertaining to the mutual agreement procedure (“**MAP**”), but has made information on MAP available on the website of New Zealand’s Inland Revenue, which is available at:

www.ird.govt.nz/international/business/international-obligations/mutual-agreement-procedure/mutual-agreement-procedure-guidance.html

Recent developments in New Zealand

New Zealand is currently conducting tax treaty negotiations with Fiji that would replace its existing tax treaty from 1976. New Zealand is also currently negotiating new tax treaties with China, Korea, Luxembourg, Norway, Portugal, Saudi Arabia, the Slovak Republic, and the United Kingdom.

Furthermore, New Zealand signed on 7 June 2017 the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (“**Multilateral Instrument**”), to adopt, where necessary, modifications to the MAP article under its tax treaties with a view to be compliant with the Action 14 Minimum Standard in respect of all the relevant tax treaties. Where treaties will not be modified by the Multilateral Instrument, New Zealand reported that, where possible, it strives to update them through future bilateral negotiations in due course. In this respect, New Zealand will prioritise pending negotiations and with those treaty partners with whom they actually have MAP cases. For the other treaty partners, it will address any deficiency in the treaties when the opportunity arises.

With the signing of the Multilateral Instrument, New Zealand also submitted its list of notifications and reservations to that instrument.³ In relation to the Action 14 Minimum

Standard, New Zealand has not made any reservations to Article 16 of the Multilateral Instrument (concerning the mutual agreement procedure).

Basis for the peer review process

The peer review process entails an evaluation of New Zealand’s implementation of the Action 14 Minimum Standard through an analysis of its legal and administrative framework relating to the mutual agreement procedure, as governed by its tax treaties, domestic legislation and regulations, as well as its MAP programme guidance and the practical application of that framework. The review process performed is desk-based and conducted through specific questionnaires completed by the assessed jurisdiction, its peers and taxpayers. The questionnaires for the peer review process were sent to New Zealand and the peers on 29 December 2017.

The period for evaluating New Zealand’s implementation of the Action 14 Minimum Standard ranges from 1 January 2016 to 31 December 2017 (“**Review Period**”). While the commitment to the Action 14 Minimum Standard only starts from 1 January 2016 New Zealand opted to provide information and requested peer input on a period starting as from 1 January 2015. Even though this period is taken into account in the analysis in this report, the basis of conclusions only concerns the period starting on 1 January 2016. In addition to the assessment on its compliance with the Action 14 Minimum Standard, New Zealand also asked for peer input on best practices, which can be accessed on the OECD website.⁴ Furthermore, this report may depict some recent developments that have occurred after the Review Period, which at this stage will not impact the assessment of New Zealand’s implementation of this minimum standard. In the update of this report, being stage 2 of the peer review process, these recent developments will be taken into account in the assessment and, if necessary, the conclusions contained in this report will be amended accordingly.

For the purpose of this report and the statistics below, in assessing whether New Zealand is compliant with the elements of the Action 14 Minimum Standard that relate to a specific treaty provision, the newly negotiated treaties or the treaties as modified by a protocol, as described above, were taken into account, even if it concerned a modification or a replacement of an existing treaty. Reference is made to Annex A for the overview of New Zealand’s tax treaties regarding the mutual agreement procedure.

In total nine peers provided input: Australia, Canada, the People’s Republic of China, Germany, the Russian Federation, Singapore, Switzerland, Turkey and the United States. Out of these nine peers, four had MAP cases with New Zealand that started on or after 1 January 2016. These peers represent 44% of post-2015 MAP cases in New Zealand’s inventory that started in 2016 or 2017. All peers reported that their relationship with New Zealand’s competent authority is positive and that New Zealand is co-operative and easy to work with when resolving MAP cases.

New Zealand provided informative answers in its questionnaire, which was submitted on time. New Zealand was very responsive in the course of the drafting of the peer review report by responding timely and comprehensively to requests for additional information, and provided further clarity where necessary. In addition, New Zealand provided the following information:

- MAP profile⁵
- MAP statistics⁶ according to the MAP Statistics Reporting Framework (see below).

Finally, New Zealand is a member of the FTA MAP Forum and has shown good co-operation during the peer review process.

Overview of MAP caseload in New Zealand

The analysis of New Zealand’s MAP caseload relates to the period starting on 1 January 2016 and ending on 31 December 2017 (“**Statistics Reporting Period**”). According to the statistics provided by New Zealand, its MAP caseload during this period was as follows:

2016-17	Opening inventory 1/1/2016	Cases started	Cases closed	End inventory 31/12/2017
Attribution/allocation cases	3	9	7	5
Other cases	5	18	18	5
Total	8	27	25	10

General outline of the peer review report

This report includes an evaluation of New Zealand’s implementation of the Action 14 Minimum Standard. The report comprises the following four sections:

- A. Preventing disputes
- B. Availability and access to MAP
- C. Resolution of MAP cases
- D. Implementation of MAP agreements.

Each of these sections is divided into elements of the Action 14 Minimum Standard, as described in the terms of reference to monitor and review the implementing of the BEPS Action 14 Minimum Standard to make dispute resolution mechanisms more effective (“**Terms of Reference**”).⁷ Apart from analysing New Zealand’s legal framework and its administrative practice, the report also incorporates peer input. Furthermore, the report depicts the changes adopted and plans shared by New Zealand to implement elements of the Action 14 Minimum Standard where relevant. The conclusion of each element identifies areas for improvement (if any) and provides for recommendations how the specific area for improvement should be addressed.

The objective of the Action 14 Minimum Standard is to make dispute resolution mechanisms more effective and concerns a continuous effort. Therefore, this peer review report includes recommendations that New Zealand continues to act in accordance with a given element of the Action 14 Minimum Standard, even if there is no area for improvement for this specific element.

Notes

1. The tax treaties New Zealand has entered into are available at <http://taxpolicy.ird.govt.nz/tax-treaties> (accessed on 18 July 2018). The two treaties that have been signed but have not yet entered into force are with the Marshall Islands (2010) and St. Kitts and Nevis (2009). Reference is made to Annex A for the overview of New Zealand's tax treaties.
2. This concerns the treaties with Australia and Japan. Reference is made to Annex A for the overview of New Zealand's tax treaties.
3. Available at: www.oecd.org/tax/treaties/beps-mli-position-new-zealand.pdf.
4. Available at: <http://oe.cd/bepsaction14>.
5. Available at www.oecd.org/tax/dispute/New%20Zealand-Dispute-Resolution-Profile.pdf.
6. The MAP statistics of New Zealand are included in Annexes B and C of this report.
7. Terms of reference to monitor and review the implementing of the BEPS Action 14 Minimum Standard to make dispute resolution mechanisms more effective. Available at: www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf.

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- OECD (2016), *BEPS Action 14 on More Effective Dispute Resolution Mechanisms, Peer Review Documents*, www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf (accessed on 18 July 2018).
- OECD (2015), *Model Tax Convention on Income and on Capital 2014 (Full Version)*, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264239081-en> (accessed on 18 July 2018).

Part A

Preventing disputes

[A.1] **Include Article 25(3), first sentence, of the OECD Model Tax Convention in tax treaties**

Jurisdictions should ensure that their tax treaties contain a provision which requires the competent authority of their jurisdiction to endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of their tax treaties.

1. Cases may arise concerning the interpretation or the application of tax treaties that do not necessarily relate to individual cases, but are more of a general nature. Inclusion of the first sentence of Article 25(3) of the OECD Model Tax Convention (OECD, 2015) in tax treaties invites and authorises competent authorities to solve these cases, which may avoid submission of MAP requests and/or future disputes from arising, and which may reinforce the consistent bilateral application of tax treaties.

Current situation of New Zealand’s tax treaties

2. Out of New Zealand’s 48 tax treaties, 37 contain a provision equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015) requiring their competent authority to endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the tax treaty. The remaining 11 treaties are not considered to have the equivalent of the first sentence of Article 25(3) for the following reasons:

- One treaty does not contain a MAP provision at all.
- One treaty contains the first sentence, but omits the words “doubts” and “interpretation”.
- Seven treaties contain the first sentence, but omit the word “interpretation”. Furthermore, the scope of the provision in these treaties is limited to difficulties or doubts as regards the application of the arm’s length principle regarding transfer pricing adjustments. While this limitation of the scope is logical given the fact that the MAP article only covers transfer pricing cases, the treaty itself provides for a broader scope of application, namely also to certain items of income concerning individuals. For these reasons, the provision is considered not to be in line with element A.1.
- Two treaties do not contain a provision equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015).

3. New Zealand reported that irrespective of whether the applicable tax treaty contains a provision equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015), there is nothing in its domestic law that obstructs New Zealand from entering into interpretative MAP agreements.

Anticipated modifications

Multilateral Instrument

4. New Zealand signed the Multilateral Instrument. Article 16(4)(c)(i) of that instrument stipulates that Article 16(3), first sentence – containing the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015) – will apply in the absence of a provision in tax treaties that is equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015). In other words, in the absence of this equivalent, Article 16(4)(c)(i) of the Multilateral Instrument will modify the applicable tax treaty to include such equivalent. However, this shall only apply if both contracting parties to the applicable tax treaty have listed this treaty as a covered tax agreement under the Multilateral Instrument and insofar as both notified, pursuant to Article 16(6)(d)(i), the depositary that this treaty does not contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015).

5. In regard of the 11 tax treaties identified above that are considered not to contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015), New Zealand listed two treaties as a covered tax agreement under the Multilateral Instrument and for all of them made a notification, pursuant to Article 16(6)(d)(i), that they do not contain a provision described in Article 16(4)(c)(i). Both treaty partners also made such a notification. Therefore, at this stage the Multilateral Instrument will, upon entry into force, modify two of 11 tax treaties identified above to include the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015).

Bilateral modifications

6. New Zealand further reported that when the tax treaties that do not contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015) will not be modified by the Multilateral Instrument, it intends to update them via bilateral negotiations with a view to be compliant with element A.1. New Zealand thereby reported that it will prioritise pending negotiations and with those treaty partners with whom they actually have MAP cases. For the other treaty partners, it will address any deficiency in the treaties when the opportunity arises. In this respect, New Zealand is already in negotiations with three treaty partners that do not contain the required provision. In addition, New Zealand reported it will seek to include Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015) in all of its future tax treaties.

Peer input

7. All peers that provided input indicated that their treaty with New Zealand meets the requirement under element A.1. For the 11 treaties identified above that do not include the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015), the relevant treaty partners did not provide peer input.

Conclusion

	Areas for improvement	Recommendations
[A.1]	11 out of 48 tax treaties do not contain a provision that is equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015).	<p>New Zealand should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015) in those two treaties that currently do not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force.</p> <p>For the remaining nine treaties that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015) following its entry into force, New Zealand should, in accordance with its plan, request the inclusion of the required provision via bilateral negotiations for those treaties where currently no negotiations are pending.</p> <p>In addition, New Zealand should maintain its stated intention to include the required provision in all future tax treaties.</p>

[A.2] Provide roll-back of bilateral APAs in appropriate cases

Jurisdictions with bilateral advance pricing arrangement (“APA”) programmes should provide for the roll-back of APAs in appropriate cases, subject to the applicable time limits (such as statutes of limitation for assessment) where the relevant facts and circumstances in the earlier tax years are the same and subject to the verification of these facts and circumstances on audit.

8. An APA is an arrangement that determines, in advance of controlled transactions, an appropriate set of criteria (e.g. method, comparables and appropriate adjustment thereto, critical assumptions as to future events) for the determination of the transfer pricing for those transactions over a fixed period of time.¹ The methodology to be applied prospectively under a bilateral or multilateral APA may be relevant in determining the treatment of comparable controlled transactions in previous filed years. The “roll-back” of an APA to these previous filed years may be helpful to prevent or resolve potential transfer pricing disputes.

New Zealand’s APA programme

9. New Zealand reported it is authorised to enter into unilateral, bilateral and multilateral APAs. New Zealand uses the MAP provision contained in New Zealand’s tax treaties as the legal basis for entering into APAs. In addition, there are no specific timelines for the filing of an APA request in New Zealand. Typically, New Zealand applies a bilateral APA for a period of three to five years.

10. New Zealand further reported there is no formal process for obtaining an APA. Taxpayers who wish to obtain an APA are advised to contact New Zealand’s transfer pricing specialists. In this respect, New Zealand’s tax administration has a dedicated webpage that contains information on APAs, which in a general sense outlines the steps that are typically applied in practice:²

- a submission of a short written proposal by the taxpayer discussing the background of its business, the associated enterprise that is party to the transaction(s) in question and the suggested transfer pricing methodology to be applied
- a pre-application meeting with one of New Zealand’s transfer pricing principal advisors to informally discuss the submitted proposal
- a formal application for an APA.

11. New Zealand mentioned that during bilateral APA negotiations it endeavours to keep in contact with the taxpayer throughout the process to ensure that the outcome agreed by the tax authorities will also be accepted by the taxpayer.

Roll-back of bilateral APAs

12. New Zealand reported that it is possible to obtain a roll-back of bilateral APAs. Where the applicable tax treaty contains the second sentence of Article 25(2) of the OECD Model Tax Convention (OECD, 2015), enabling agreements to be implemented notwithstanding domestic time limits, New Zealand can grant roll-back without any timing restrictions. In other situations, New Zealand reported that roll-backs are available for at least four fiscal years.

13. While the webpage of New Zealand’s tax administration containing information on its APA programme does not specifically address the possibility of roll-back of bilateral APAs, the webpage containing information on MAP includes specific information hereon.

Practical application of roll-back of bilateral APAs

14. New Zealand reported having entered into five bilateral APAs during the Review Period. Concerning roll-backs of bilateral APAs, New Zealand reported that since 1 January 2015 it received one request for a roll-back, which was granted.

15. Of the peers that provided input, two have reported receiving a roll-back request of a bilateral APA concerning New Zealand. One of these peers received such a request in 2017, for which it considered that the request was dealt with effectively in prior years as a MAP and as an APA for prospective years. The second peer reported having received a request for a bilateral APA request since 1 January 2015, which also concerns a roll-back to previous years. This peer further mentioned that there have been no indications that the roll-back will not be accepted by New Zealand. In relation to this request, New Zealand reported that there was not yet a formal APA application received, but that it expected such application on short notice.

Anticipated modifications

16. New Zealand did not indicate that it anticipates any modifications in relation to element A.2.

Conclusion

	Areas for improvement	Recommendations
[A.2]	-	New Zealand should continue to provide for roll-back of bilateral APAs in appropriate cases as it has done thus far.

Notes

1. This description of an APA based on the definition of an APA in the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations.
2. Available at: <https://www.ird.govt.nz/international/business/transfer-pricing/transfer-pricing/practice/transfer-pricing-practice-apas.html> (accessed on 18 July 2018).

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- OECD (2017), *OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations 2017*, OECD Publishing, Paris, <http://dx.doi.org/10.1787/tpg-2017-en> (accessed on 18 July 2018).
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Part B

Availability and access to MAP

[B.1] Include Article 25(1) of the OECD Model Tax Convention in tax treaties

Jurisdictions should ensure that their tax treaties contain a MAP provision which provides that when the taxpayer considers that the actions of one or both of the Contracting Parties result or will result for the taxpayer in taxation not in accordance with the provisions of the tax treaty, the taxpayer, may irrespective of the remedies provided by the domestic law of those Contracting Parties, make a request for MAP assistance, and that the taxpayer can present the request within a period of no less than three years from the first notification of the action resulting in taxation not in accordance with the provisions of the tax treaty.

17. For resolving cases of taxation not in accordance with the provisions of the tax treaty, it is necessary that tax treaties include a provision allowing taxpayers to request a mutual agreement procedure and that this procedure can be requested irrespective of the remedies provided by the domestic law of the treaty partners. In addition, to provide certainty to taxpayers and competent authorities on the availability of the mutual agreement procedure, a minimum period of three years for submission of a MAP request, beginning on the date of the first notification of the action resulting in taxation not in accordance with the provisions of the tax treaty, is the baseline.

Current situation of New Zealand's tax treaties

Inclusion of Article 25(1), first sentence of the OECD Model Tax Convention

18. Out of New Zealand's 48 tax treaties, 19 contain a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b), allowing taxpayers to submit a MAP request to the competent authority of the state in which they are resident when they consider that the actions of one or both of the treaty partners result or will result for the taxpayer in taxation not in accordance with the provisions of the tax treaty and that can be requested irrespective of the remedies provided by the domestic law of either state.

19. The remaining 29 tax treaties can be categorised as follows:

Provision	Number of tax treaties
No MAP provision	1
A variation to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b), whereby the taxpayer can submit a MAP request irrespective of domestic available remedies, but whereby pursuant to a protocol provision the taxpayer is also required to initiate these remedies when submitting a MAP request.	1
A variation to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b), whereby the MAP is provided in cases of “double taxation contrary to the provisions of the treaty” instead of “taxation not in accordance with the provisions of the convention”.	1
A variation of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b), whereby taxpayers can only submit a MAP request for transfer pricing adjustments, whereas the scope of the treaty also covers certain items of income concerning individuals.	7
A variation of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b), whereby taxpayers can only submit a MAP request to the competent authorities of the contracting state of which they are resident.	19

20. The treaty mentioned in the second row of the table above allows taxpayers to submit a MAP request irrespective of domestic available remedies. However, the protocol to this treaty limits such submission, as it requires that a domestic remedy should first be initiated before a case can be dealt with in MAP. This provision reads:

the expression “notwithstanding the remedies provided by the national laws” shall not be understood to mean that the time limits prescribed by national laws shall not be observed; a claim under Article 24 shall not be entertained where the taxpayer has not taken the appropriate action under the national laws.

21. As pursuant to this provision a domestic procedure has to be initiated concomitantly to the initiation of the mutual agreement procedure, a MAP request can in practice thus not be submitted irrespective of the remedies provided by the domestic law, even though the provision contained in the MAP article is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the final report on Action 14 (OECD, 2015b). This treaty is therefore considered not in line with this part of element B.1.

22. With respect to the treaty mentioned in the third row of the table above, this treaty is considered not having the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b), as the requirement of “double taxation” limits the scope of application of the MAP provision. In this respect, New Zealand specified that it will grant access to MAP for requests submitted under this treaty that would relate to mere taxation not in accordance with the tax treaty, even though the treaty itself requires the occurrence of “double taxation”.

23. The seven treaties mentioned in the fourth row above concern “agreements for the allocation of taxing rights with respect to certain income of individuals and to establish a mutual agreement procedure in respect of transfer pricing adjustments”. The scope of MAP is limited to cases concerning transfer pricing adjustments not in accordance with the arm’s length principle. However, as the scope of application of these treaties is broader

than just transfer pricing cases, they are considered not to be equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a).

24. The 19 treaties mentioned in the last row of the above table are also considered not to have the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b), since taxpayers are not allowed to submit a MAP request in the state of which they are a national where the case comes under the non-discrimination article. However, for the following reasons 18 of these 19 treaties are considered to be in line with this part of element B.1:

- The relevant tax treaty does not contain a non-discrimination provision and only applies to residents of one of the states (nine treaties).
- The non-discrimination provision of the relevant tax treaty only covers nationals that are resident of one of the contracting states, following which it is logical to only allow for the submission of MAP requests to the state of which the taxpayer is a resident (nine treaties).

25. In the remaining treaty the non-discrimination provision is based on Article 24(1) of the OECD Model Tax Convention (OECD, 2015a) and applies to both nationals that are and are not resident of one of the contracting states. The omission of the full text of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) is therefore not clarified by the absence of or a limited scope of the non-discrimination article, following which this treaty is not in line with this part of element B.1.

Inclusion of Article 25(1), second sentence of the OECD Model Tax Convention

26. Out of New Zealand's 48 tax treaties, 29 contain a provision equivalent to Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2015a) allowing taxpayers to submit a MAP request within a period of no less than three years from the first notification of the action resulting in taxation not in accordance with the provisions of the particular tax treaty.

27. The remaining 19 tax treaties that do not contain such a provision can be categorised as follows:

Provision	Number of tax treaties
No MAP provision	1
No filing period for a MAP request	5
Filing period less than three years for a MAP request (two years)	3
Filing period more than three years for a MAP request (four years)	1
Filing period more than three years for a MAP request (five years)	2
Treaties that have a limited scope of application, whereby the MAP is restricted to transfer pricing cases and whereby the filing period is three years as of the date of the first notification of a transfer pricing adjustment.	7

28. Although the seven treaties in the last row of the table above include a three-year filing period for MAP requests, the fact that MAP is only open to transfer pricing cases whereas the scope of the treaty is broader and for which it was concluded that this is not in line with element B.1, the limitation of the filing period to the date of transfer pricing adjustment is therefore also considered not to be in line with this element.

29. Where a tax treaty does not contain a filing period for a MAP request, New Zealand reported it applies its domestic law regarding time limits for amending tax assessments. In this respect, New Zealand's Tax Administration Act of 1994 ("TAA") includes a four-year time limit for increasing an amount of tax assessed (or reducing a taxpayer's amount of net losses) as from the end of the fiscal year in which the taxpayer submitted its tax return. In practice and for transfer pricing cases, this filing period may be extended to five and a half years after the end of the fiscal year in which the profit accrued.¹ Additionally, New Zealand mentioned that for transfer pricing cases its parliament is considering to extend the time limit to seven years (with an option to eight and a half years after the end of the fiscal year in which the profit occurred). While this system generally provides for a period longer than three years, there is a risk that taxpayers are not allowed to validly present a MAP request within a period of at least three years as from the first notification of the action that results or is likely to result in taxation not in accordance with the provisions of the tax treaty.

Anticipated modifications

Multilateral Instrument

Article 25(1), first sentence of the OECD Model Tax Convention

30. New Zealand signed the Multilateral Instrument. Article 16(4)(a)(i) of that instrument stipulates that Article 16(1), first sentence – containing the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as amended by the final report on Action 14 (OECD, 2015b) and allowing the submission of MAP requests to the competent authority of either contracting state – will apply in place of or in the absence of a provision in tax treaties that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the final report on Action 14 (OECD, 2015b). However, this shall only apply if both contracting parties to the applicable tax treaty have listed this tax treaty as a covered tax agreement under the Multilateral Instrument and insofar as both notified the depositary, pursuant to Article 16(6)(a), that this treaty contains the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the final report on Action 14 (OECD, 2015b). Where only one of the treaty partners made such a notification, article 16(4)(a)(i) of the Multilateral Instrument will supersede this treaty only to the extent that the provision contained in that treaty is incompatible with Article 16(1) (containing the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as amended by the final report on Action 14 (OECD, 2015b)). Furthermore, Article 16(4)(a)(i) will for a tax treaty not take effect if one of the treaty partners has, pursuant to Article 16(5)(a), reserved the right not to apply the first sentence of Article 16(1) of that instrument to all of its covered tax agreements.

31. With the signing of the Multilateral Instrument, New Zealand opted, pursuant to Article 16(4)(a)(i) of that instrument, to introduce in all of its tax treaties a provision that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as amended by the final report on Action 14 (OECD, 2015b), allowing taxpayers to submit a MAP request to the competent authority of either contracting state. In other words, where under New Zealand's tax treaties taxpayers currently have to submit a MAP request to the competent authority of the contracting state of which it is a resident, New Zealand opted to modify these treaties allowing taxpayers to submit a MAP request to the competent authority of either contracting state. In this respect, New Zealand listed 36 of its

48 treaties as a covered tax agreement under the Multilateral Instrument and made, on the basis of Article 16(6)(a), for all of them the notification that they contain a provision that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the final report on Action 14 (OECD, 2015b).

32. In total, five of 36 relevant treaty partners are not a signatory to the Multilateral Instrument, whereas three have not listed their treaty with New Zealand as a covered tax agreement under that instrument and 11 reserved, pursuant to Article 16(5)(a), the right not to apply the first sentence of Article 16(1) to its existing tax treaties. The remaining 17 treaty partners listed their treaty with New Zealand as having a provision that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the final report on Action 14 (OECD, 2015b). Therefore, at this stage the Multilateral Instrument will, upon entry into force, modify 17 treaties to incorporate the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as amended by the final report on Action 14 (OECD, 2015b).

33. In view of the above and in relation to the 11 treaties identified in paragraphs 18-25 that are considered not to contain the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the final report on Action 14 (OECD, 2015b), one is part of the 17 treaties that will be modified via the Multilateral Instrument.

Article 25(1), second sentence of the OECD Model Tax Convention

34. With respect to the period of filing of a MAP request, Article 16(4)(a)(ii) of the Multilateral Instrument stipulates that Article 16(1), second sentence – containing the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2015a) – will apply where such period is shorter than three years from the first notification of the action resulting in taxation not in accordance with the provisions of a tax treaty. However, this shall only apply if both contracting parties to the applicable tax treaty have listed this treaty as a covered tax agreement under the Multilateral Instrument and insofar as both notified, pursuant to Article 16(6)(b)(i), the depositary that this treaty does not contain the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2015a).

35. In regard of the 11 tax treaties identified in paragraph 19 above that contain a filing period for MAP requests of less than three years or where the start date of this period is such that there is a risk a MAP request cannot be filed within three years, New Zealand listed three treaties as a covered tax agreement under the Multilateral Instrument and for all of them did it make, pursuant to Article 16(6)(b)(i), a notification that they do not contain a provision described in Article 16(4)(a)(ii). Of the three relevant treaty partners, one is not a signatory to the Multilateral Instrument, whereas two also made such notification. Therefore, at this stage the Multilateral Instrument will, upon entry into force, modify two of the 11 treaties to include the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2015a).

Bilateral modifications

36. New Zealand reported that when the tax treaties that do not include the equivalent of Article 25(1) of the OECD Model Tax Convention (OECD, 2015a), as it read prior to the adoption of the final report on Action 14 (OECD, 2015b), and which will not be modified by the Multilateral Instrument, it intends to update them via bilateral negotiations with a view to be compliant with element B.1. New Zealand thereby reported that it will prioritise

pending negotiations and with those treaty partners with whom they actually have MAP cases. For the other treaty partners, it will address any deficiency in the treaties when the opportunity arises. In this respect, New Zealand is already in negotiations with three treaty partners that do not contain the required provision. In addition, New Zealand reported it will seek to include Article 25(1) of the OECD Model Tax Convention (OECD, 2015a) in all of its future tax treaties.

37. With respect to the first sentence of Article 25(1), New Zealand that it will in those bilateral negotiations propose to include the equivalent as it read after the adoption of the final report on Action 14 (OECD, 2015b). In addition, New Zealand reported it will seek to include Article 25(1) of the OECD Model Tax Convention (OECD, 2015a), as amended by the final report on Action 14 (OECD, 2015b), in all of its future tax treaties.

Peer input

38. Almost all peers that provided input reported that their treaty with New Zealand meets the requirement under element B.1.

39. For the 13 treaties identified that do not include the equivalent of Article 25(1) of the OECD Model Tax Convention (OECD, 2015a), one of the relevant peers indicated that its treaty with New Zealand does not formally meet the requirements under element B.1. However, this treaty is in line with these requirements. Another peer indicated its treaty will be modified by the Multilateral Instrument to bring it in line with the requirement under element B.1., which indeed follows from the above analysis.

Conclusion

	Areas for improvement	Recommendations
[B.1]	<p>13 out of 48 tax treaties do not contain a provision that is equivalent to Article 25(1) of the OECD Model Tax Convention (OECD, 2015a). Of those 13 tax treaties:</p> <ul style="list-style-type: none"> • Nine tax treaties do not contain the equivalent to Article 25(1), first sentence and the timeline to file such request is shorter than three years as from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty. • Two tax treaties do not contain the equivalent to Article 25(1), first sentence. • Two tax treaties provide that the timeline to file a MAP request is shorter than three years from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty. 	<p>New Zealand should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent to Article 25(1) of the OECD Model Tax Convention (OECD, 2015a) in those treaties that currently do not contain such equivalent. This concerns both:</p> <ul style="list-style-type: none"> • a provision that is equivalent to Article 25(1), first sentence of the OECD Model Tax Convention (OECD, 2015a) either: <ul style="list-style-type: none"> a. As amended in the final report of Action 14 (OECD, 2015b); or b. As it read prior to the adoption of final report of Action 14 (OECD, 2015b), thereby including the full sentence of such provision; and • a provision that allows taxpayers to submit a MAP request within a period of no less than three years as from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty. <p>For the remaining treaties that will not be modified by the Multilateral Instrument following its entry into force to include such equivalent, New Zealand should, in accordance with its plan, request the inclusion of the required provision via bilateral negotiations for those treaties where currently no negotiations are pending.</p> <p>In addition, New Zealand should maintain its stated intention to include the required provision in all future tax treaties.</p>

	Areas for improvement	Recommendations
[B.1] <i>cont.</i>	Where tax treaties do not contain a time limit for submission of a MAP request, applicable rules under domestic legislation bears the risk that taxpayers cannot validly present a MAP request within a period of at least three years as from the first notification of the action that results or will result in taxation not in accordance with the provisions of the tax treaty.	New Zealand should ensure that where its domestic time limits apply for filing of MAP requests, in the absence of a provision hereon in its tax treaties, such time limits do not prevent taxpayers from access to MAP if a request thereto is made within a period of three years as from the first notification of the action that results or will result in taxation not in accordance with the provisions of the tax treaty.

[B.2] Allow submission of MAP requests to the competent authority of either treaty partner, or, alternatively, introduce a bilateral consultation or notification process

Jurisdictions should ensure that either (i) their tax treaties contain a provision which provides that the taxpayer can make a request for MAP assistance to the competent authority of either Contracting Party, or (ii) where the treaty does not permit a MAP request to be made to either Contracting Party and the competent authority who received the MAP request from the taxpayer does not consider the taxpayer's objection to be justified, the competent authority should implement a bilateral consultation or notification process which allows the other competent authority to provide its views on the case (such consultation shall not be interpreted as consultation as to how to resolve the case).

40. In order to ensure that all competent authorities concerned are aware of MAP requests submitted, for a proper consideration of the request by them and to ensure that taxpayers have effective access to MAP in eligible cases, it is essential that all tax treaties contain a provision that either allows taxpayers to submit a MAP request to the competent authority:

- i. of either treaty partner; or, in the absence of such provision
- ii. where it is a resident, or to the competent authority of the state of which they are a national if their cases come under the non-discrimination article. In such cases, jurisdictions should have in place a bilateral consultation or notification process where a competent authority considers the objection raised by the taxpayer in a MAP request as being not justified.

Domestic bilateral consultation or notification process in place

41. As discussed under element B.1, none of New Zealand's 48 tax treaties currently contains a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as changed by the Action 14 final report (OECD, 2015b), allowing taxpayers to submit a MAP request to the competent authority of either treaty partner. However, as was also discussed under element B.1, 16 of these 48 treaties will, upon entry into force, be modified by the Multilateral Instrument to allow taxpayers to submit a MAP request to the competent authority of either treaty partner.

42. New Zealand reported when its competent authority considers that an objection raised in a MAP request is not justified, it will, as a matter of general administrative practice, notify the taxpayer hereof and of the reason for this decision. New Zealand, however, has not introduced a bilateral consultation or notification process which allows the other competent authority concerned to provide its views on the case when New Zealand's competent authority considers the objection raised in the MAP request not to be justified.

Practical application

43. New Zealand reported that since 1 January 2015 its competent authority for none of the MAP cases it received decided that the objection raised by taxpayers in such request as being not justified. The 2016 and 2017 MAP statistics submitted by New Zealand also show that none of its MAP cases were closed with the outcome “objection not justified”.

44. All peers that provided input indicated not being aware of any cases for which New Zealand’s competent authority denied access to MAP. They also reported not having been consulted/notified of a case where New Zealand’s competent authority considered the objection raised in a MAP request as not justified. This can be explained by the fact that New Zealand since 1 January 2015 did not consider that an objection raised in a MAP request was not justified.

Anticipated modifications

45. As previously discussed under element B.1, New Zealand has signed the Multilateral Instrument, inter alia with the intention to modify covered tax agreements to allow taxpayers to submit a MAP request to the competent authority of either contracting state. Apart from that, New Zealand did not indicate that it anticipates any modifications in relation to element B.2.

Conclusion

	Areas for improvement	Recommendations
[B.2]	None of the 48 treaties currently contain a provision equivalent to Article 25(1) of the OECD Model Tax Convention (OECD, 2015a) as changed by the Action 14 final report (OECD, 2015b), allowing taxpayers to submit a MAP request to the competent authority of either treaty partners. For these treaties no documented bilateral consultation or notification process is in place, which allows the other competent authority concerned to provide its views on the case when the taxpayer’s objection raised in the MAP request is considered not to be justified.	New Zealand should introduce a documented notification and/or consultation procedure for cases in which its competent authority considered the objection raised in a MAP request not to be justified and when the tax treaty concerned does not include Article 25(1) of the OECD Model Tax Convention (OECD, 2015a) as amended by the final report of Action 14 (OECD, 2015b).

[B.3] Provide access to MAP in transfer pricing cases

Jurisdictions should provide access to MAP in transfer pricing cases.

46. Where two or more tax administrations take different positions on what constitutes arm’s length conditions for specific transactions between associated enterprises, economic double taxation may occur. Not granting access to MAP with respect to a treaty partner’s transfer pricing adjustment, with a view to eliminating the economic double taxation that may arise from such adjustment, will likely frustrate the main objective of tax treaties. Jurisdictions should thus provide access to MAP in transfer pricing cases.

Legal and administrative framework

47. Out of New Zealand’s 48 tax treaties, 27 contain a provision equivalent to Article 9(2) of the OECD Model Tax Convention (OECD, 2015a) requiring their state to make a correlative adjustment in case a transfer pricing adjustment is imposed by the treaty partner.

Furthermore, 19 treaties do not contain such a provision. Of the remaining two treaties, one does not contain a provision on associated enterprises at all, as the scope of the treaty is limited to individuals, and one treaty includes a provision on granting corresponding adjustments, but deviates from this provision because granting of corresponding adjustments is only allowed through MAP.

48. Access to MAP should be provided in transfer pricing cases regardless of whether the equivalent of Article 9(2) is contained in New Zealand's tax treaties and irrespective of whether its domestic legislation enables the granting of corresponding adjustments. In accordance with element B3, New Zealand indicated that it will always provide access to MAP for transfer pricing cases and is willing to make corresponding adjustments, where the scope of the treaty also covers such cases. This applies to all 48 of New Zealand's tax treaties, except the one treaty that does not contain a provision on transfer pricing. The webpage of New Zealand's tax administration in relation to the mutual agreement procedure states that as a matter of general policy taxpayers have access to MAP in transfer pricing cases.

Application of legal and administrative framework in practice

49. New Zealand reported that it has not denied access to MAP on the basis that the case concerned is a transfer pricing case since 1 January 2015.

50. All peers that provided input indicated not being aware of a denial of access to MAP by New Zealand on the basis that the case concerned was a transfer pricing case.

Anticipated modifications

51. New Zealand reported that it is in favour of including Article 9(2) of the OECD Model Tax Convention (OECD, 2015a) in its tax treaties where possible and that it will seek to include this provision in all of its future tax treaties. In that regard, New Zealand signed the Multilateral Instrument. Article 17(2) of that instrument stipulates that Article 17(1) – containing the equivalent of Article 9(2) of the OECD Model Tax Convention (OECD, 2015a) – will apply in place of or in the absence of a provision in tax treaties that is equivalent to Article 9(2) of the OECD Model Tax Convention (OECD, 2015a). However, this shall only apply if both contracting parties to the applicable tax treaty have listed this treaty as a covered tax agreement under the Multilateral Instrument. Article 17(2) of the Multilateral Instrument does not take effect for a tax treaty if one or both of the treaty partners have, pursuant to Article 17(3), reserved the right to not apply Article 17(2) for those tax treaties that already contain the equivalent of Article 9(2) of the OECD Model Tax Convention (OECD, 2015a), or not to apply Article 17(2) in the absence of such equivalent under the condition that: (i) it shall make appropriate corresponding adjustments or (ii) its competent authority shall endeavour to resolve the case under mutual agreement procedure of the applicable tax treaty. Where neither treaty partner has made such a reservation, Article 17(4) of the Multilateral Instrument stipulates that both have to notify the depositary whether the applicable treaty already contains a provision equivalent to Article 9(2) of the OECD Model Tax Convention (OECD, 2015a). Where such a notification is made by both of them, the Multilateral Instrument will modify this treaty to replace that provision. If neither or only one treaty partner made this notification, Article 17(1) of the Multilateral Instrument will supersede this treaty only to the extent that the provision contained in that treaty relating to the granting of corresponding adjustments is incompatible with Article 17(1) (containing the equivalent of Article 9(2) of the OECD Model Tax Convention (OECD, 2015a)).

52. New Zealand has not reserved the right, pursuant to Article 17(3), not to apply Article 17(2) of the Multilateral Instrument for those tax treaties that already contain a provision equivalent to Article 9(2) of the OECD Model Tax Convention (OECD, 2015a). In regard of the 21 tax treaties identified in paragraph 35 above that are considered not to contain this equivalent, New Zealand listed 12 as a covered tax agreement under the Multilateral Instrument, but only for two of them made a notification on the basis of Article 17(4) that they do contain a provision described in Article 17(2). Both treaty partners are a signatory to the Multilateral Instrument and listed their treaty with New Zealand under that instrument, but only one of them has, on the basis of Article 17(3), reserved the right not to apply Article 17(2) as it considered that its treaty with New Zealand already contains the equivalent of Article 9(2). The remaining treaty partner made a notification on the basis of Article 17(4). Therefore, at this stage, the Multilateral Instrument will, upon entry into force, replace the provisions in one treaty to include the equivalent of Article 9(2) of the OECD Model Tax Convention (OECD, 2015a).

53. Furthermore, for the remaining 10 of the 12 tax treaties that New Zealand listed as covered tax agreements under the Multilateral Instrument and for which it did not make a notification on the basis of Article 17(4), two have not listed their treaty with New Zealand under that instrument. Of the relevant eight treaty partners, one has, pursuant to Article 17(3), reserved the right to not apply Article 17(2), as they consider their treaty with New Zealand already to contain the equivalent of Article 9(2) of the OECD Model Tax Convention (OECD, 2015a). Therefore, at this stage, the Multilateral Instrument will, upon entry into force, supersede the remaining seven treaties only to the extent that the provisions contained in those treaties relating to the granting of corresponding adjustments are incompatible with Article 17(1).

Conclusion

	Areas for improvement	Recommendations
[B.3]	-	As New Zealand has thus far granted access to MAP in eligible transfer pricing cases, it should continue granting access for these cases.

[B.4] Provide access to MAP in relation to the application of anti-abuse provisions

Jurisdictions should provide access to MAP in cases in which there is a disagreement between the taxpayer and the tax authorities making the adjustment as to whether the conditions for the application of a treaty anti-abuse provision have been met or as to whether the application of a domestic law anti-abuse provision is in conflict with the provisions of a treaty.

54. There is no general rule denying access to MAP in cases of perceived abuse. In order to protect taxpayers from arbitrary application of anti-abuse provisions in tax treaties and in order to ensure that competent authorities have a common understanding on such application, it is important that taxpayers have access to MAP if they consider the interpretation and/or application of a treaty anti-abuse provision as being incorrect. Subsequently, to avoid cases in which the application of domestic anti-abuse legislation is in conflict with the provisions of a tax treaty, it is also important that taxpayers have access to MAP in such cases.

Legal and administrative framework

55. None of New Zealand’s 48 tax treaties allow competent authorities to restrict access to MAP for cases when a treaty anti-abuse provision applies or when there is a disagreement between the taxpayer and the tax authorities as to whether the application of a domestic law anti-abuse provision is in conflict with the provisions of a tax treaty. In addition, the domestic law and/or administrative processes of New Zealand do not include a provision allowing its competent authority to limit access to MAP for cases in which there is a disagreement between the taxpayer and the tax authorities as to whether the conditions for the application of a domestic law anti-abuse provision is in conflict with the provisions of a tax treaty.

56. The webpage of New Zealand’s tax administration containing information on MAP gives examples of cases for which taxpayers have access to MAP, which includes cases concerning the application of anti-abuse provisions in tax treaties or domestic anti-abuse provisions.

Practical application

57. New Zealand reported that since 1 January 2015 it did not deny access to MAP in any case in which there was a disagreement between the taxpayer and the tax authorities as to whether the conditions for the application of a treaty anti-abuse provision have been met, or as to whether the application of a domestic law anti-abuse provision is in conflict with the provisions of a tax treaty.

58. All peers that provided input indicated not being aware of cases that have been denied access to MAP in New Zealand since 1 January 2015 in relation to the application of treaty and/or domestic anti-abuse provisions.

Anticipated modifications

59. New Zealand did not indicate that it anticipates any modifications in relation to element B.4.

Conclusion

	Areas for improvement	Recommendations
[B.4]	New Zealand reported it will give access to MAP in cases concerning whether the conditions for the application of a treaty anti-abuse provision have been met or whether the application of a domestic law anti-abuse provision is in conflict with the provisions of a treaty. Its competent authority, however, did not receive any MAP request of this kind from taxpayers during the Review Period. New Zealand is therefore recommended to follow its policy and grant access to MAP when such cases surface.	

[B.5] Provide access to MAP in cases of audit settlements

Jurisdictions should not deny access to MAP in cases where there is an audit settlement between tax authorities and taxpayers. If jurisdictions have an administrative or statutory dispute settlement/resolution process independent from the audit and examination functions and that can only be accessed through a request by the taxpayer, jurisdictions may limit access to the MAP with respect to the matters resolved through that process.

60. An audit settlement procedure can be valuable to taxpayers by providing certainty on their tax position. Nevertheless, as double taxation may not be fully eliminated by agreeing on such settlements, taxpayers should have access to the MAP in such cases, unless they were already resolved via an administrative or statutory disputes settlement/resolution process that functions independently from the audit and examination function and which is only accessible through a request by taxpayers.

Legal and administrative framework

Audit settlements

61. New Zealand reported that under its domestic law it is possible for taxpayers and the tax administration to enter into an audit settlement. On 22 June 2016, New Zealand's Inland Revenue issued operational guidelines on such settlements. These guidelines confirm that the Inland Revenue can agree to settle disputes with taxpayers prior to initiating judicial proceedings and under what circumstances this can occur. In that regard, New Zealand reported that entering into such a settlement agreement does not constitute grounds for not granting a taxpayer access to MAP.

Administrative or statutory dispute settlement/resolution process

62. New Zealand reported it has a review process in place, which is administered by the Disputes Review Unit within the Inland Revenue. The website of New Zealand's tax administration includes information on this unit and on how it operates.² This webpage states that the dispute resolution process at the level of the Disputes Review Unit was put in place to establish procedures to reduce the number of disputes, to encourage prompt and efficient resolution of tax disputes, to promote the early identification of disputable issues and to improve accuracy of decisions. The role of the Disputes Review Unit is to provide an impartial and objective review of unresolved disputes between taxpayers and the tax administration. The Disputes Review Unit is placed within the Office of the Chief Tax Counsel within New Zealand's tax administration. In this respect, New Zealand reported it operates independently from the audit and examination function and the process can only be accessed through a request by the taxpayer. Requesting assistance to resolve a dispute under MAP, however, is not impacted by a prior decision by the Disputes Review Unit.

63. Where a taxpayer and the tax administration are not able to come to an agreement on the taxpayer's tax position, taxpayers can request a decision from the Disputes Review Unit. The tax administration is not allowed to challenge the decision of the Disputes Review Unit when the result is in favour of the taxpayer. The taxpayer, however, is allowed to initiate judicial remedies when the Disputes Review Unit has ruled in favour of New Zealand's tax administration, including the submission of a MAP request.

64. In view of the above, the process is not considered to constitute an administrative or statutory settlement/resolution process in the sense of element B.5 that provides for a

binding decision on the taxpayer to resolve a dispute and on the basis of which access to MAP can be denied.

Practical application

65. New Zealand reported that since 1 January 2015 it has not denied access to MAP in any cases where the issue presented by the taxpayer in a MAP request has already been resolved through an audit settlement between the taxpayer and the tax administration.

66. All peers that provided input indicated not being aware of a denial of access to MAP in New Zealand since 1 January 2015 in cases where there was an audit settlement between the taxpayer and the tax administration.

Anticipated modifications

67. New Zealand did not indicate that it anticipates any modifications in relation to element B.5.

Conclusion

	Areas for improvement	Recommendations
[B.5]	New Zealand reported it will give access to MAP in cases where the tax authority and the taxpayer have entered into an audit settlement. Its competent authority, however, did not receive any MAP requests of this kind from taxpayers during the Review Period. New Zealand is therefore recommended to follow its policy and grant access to MAP when such cases surface.	

[B.6] Provide access to MAP if required information is submitted

Jurisdictions should not limit access to MAP based on the argument that insufficient information was provided if the taxpayer has provided the required information based on the rules, guidelines and procedures made available to taxpayers on access to and the use of MAP.

68. To resolve cases where there is taxation not in accordance with the provisions of the tax treaty, it is important that competent authorities do not limit access to MAP when taxpayers have complied with the information and documentation requirements as provided in the jurisdiction's guidance relating hereto. Access to MAP will be facilitated when such required information and documentation is made publically available.

Legal framework on access to MAP and information to be submitted

69. The information and documentation New Zealand requires taxpayers to include in a request for MAP assistance are discussed under element B.8.

70. New Zealand reported that in general it receives the necessary information and documentation when taxpayers submit a MAP request with its competent authority. When a taxpayer does not include all required information or documentation in its MAP request, New Zealand noted that the tax administration will immediately after its initial review of the request liaise with the taxpayer (either by telephone or e-mail) and ask it to provide such information within one month from receipt of the initial MAP request. New Zealand further reported that it does not experience problems with receiving such additional information in practice and that it is rare to not receive such information from the taxpayer

upon request. Where taxpayers do not timely provide the requested information, they are reminded by telephone, e-mail or letters. While it never happened in practice, if taxpayers would still not provide the additionally requested information, New Zealand would terminate the case if the missing information is considered material for purposes of resolving the case. In other instances, New Zealand reported it will initiate the MAP case despite the missing information.

Practical application

71. New Zealand reported that it provides access to MAP in all cases where taxpayers have complied with the information or documentation requirements as set out on the webpage containing information on MAP. It further reported that since 1 January 2015 its competent authority has not denied access to MAP for cases where the taxpayer did not provided the required information or documentation.

72. All peers that provided input indicated not being aware of a limitation of access to MAP by New Zealand since 1 January 2015 in situations where taxpayers complied with information and documentation requirements.

Anticipated modifications

73. New Zealand did not indicate that it anticipates any modifications in relation to element B.6.

Conclusion

	Areas for improvement	Recommendations
[B.6]	-	As New Zealand has thus far not limited access to MAP in eligible cases when taxpayers have complied with New Zealand's information and documentation requirements for MAP requests, it should continue this practice.

[B.7] Include Article 25(3), second sentence, of the OECD Model Tax Convention in tax treaties

Jurisdictions should ensure that their tax treaties contain a provision under which competent authorities may consult together for the elimination of double taxation in cases not provided for in their tax treaties.

74. For ensuring that tax treaties operate effectively and in order for competent authorities to be able to respond quickly to unanticipated situations, it is useful that tax treaties include the second sentence of Article 25(3) of the OECD Model Tax Convention (OECD, 2015a), enabling them to consult together for the elimination of double taxation in cases not provided for by these treaties.

Current situation of New Zealand’s tax treaties

75. Out of New Zealand’s 48 tax treaties, 25 contain a provision equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015a) allowing their competent authorities to consult together for the elimination of double taxation in cases not provided for in their tax treaties. All remaining 23 treaties do not contain any such provision.

Anticipated modifications

Multilateral Instrument

76. New Zealand signed the Multilateral Instrument. Article 16(4)(c)(ii) of that instrument stipulates that Article 16(3), second sentence – containing the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015a) – will apply in the absence of a provision in tax treaties that is equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015a). In other words, in the absence of this equivalent, Article 16(4)(c)(ii) of the Multilateral Instrument will modify the applicable tax treaty to include such equivalent. However, this shall only apply if both contracting parties to the applicable tax treaty have listed this treaty as a covered tax agreement under the Multilateral Instrument and insofar as both notified, pursuant to Article 16(6)(d)(ii), the depositary that this treaty does not contain the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015a).

77. In regard of the 23 tax treaties identified above that are considered not to contain the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015a), New Zealand listed 14 treaties as a covered tax agreement under the Multilateral Instrument and for all of them made a notification, pursuant to Article 16(6)(d)(ii), that they do not include a provision described in Article 16(4)(c)(ii). Of the relevant 14 treaty partners, two are not a signatory to the Multilateral Instrument. All remaining 12 treaty partners also made such notification. Therefore, at this stage the Multilateral Instrument will, upon entry into force modify 12 of 23 tax treaties identified above to contain the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015a).

Bilateral modifications

78. New Zealand reported that when the tax treaties that do not contain the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015a) and which will not be modified by the Multilateral Instrument, it intends to update them via bilateral negotiations with a view to be compliant with element B.7. New Zealand thereby reported that it will prioritise pending negotiations and with those treaty partners with whom they actually have MAP cases. For the other treaty partners, it will address any deficiency in the treaties when the opportunity arises. In this respect, New Zealand is already in negotiations with three treaty partners that do not contain the required provision. In addition, New Zealand reported it will seek to include Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015a) in all of its future tax treaties.

Peer input

79. Most of the peers that provided input mentioned that their treaty with New Zealand meets the requirement under element B.7.

80. For the 23 treaties identified above that do not include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015a), three peers provided input. One peer indicated that the MAP article in its tax treaty with New Zealand does not contain such equivalent. Two other peers also noted that its tax treaty with New Zealand does not contain this equivalent either, but that it will be modified by the Multilateral Instrument to incorporate such provision. From the analysis conducted it follows that for both peers such modification will take place via that instrument.

Conclusion

	Areas for improvement	Recommendations
[B.7]	23 out of 48 tax treaties do not contain a provision that is equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015a).	<p>New Zealand should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015a) in those 12 treaties that currently do not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force.</p> <p>For the remaining 11 treaties that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015a) following its entry into force, New Zealand should, in accordance with its plan, request the inclusion of the required provision via bilateral negotiations for those treaties where currently no negotiations are pending.</p> <p>In addition, New Zealand should maintain its stated intention to include the required provision in all future tax treaties.</p>

[B.8] Publish clear and comprehensive MAP guidance

Jurisdictions should publish clear rules, guidelines and procedures on access to and use of the MAP and include the specific information and documentation that should be submitted in a taxpayer's request for MAP assistance.

81. Information on a jurisdiction's MAP regime facilitates the timely initiation and resolution of MAP cases. Clear rules, guidelines and procedures on access to and use of the MAP are essential for making taxpayers and other stakeholders aware of how a jurisdiction's MAP regime functions. In addition, to ensure that a MAP request is received and will be reviewed by the competent authority in a timely manner, it is important that a jurisdiction's MAP guidance clearly and comprehensively explains how a taxpayer can make a MAP request and what information and documentation should be included in such request.

New Zealand's MAP guidance

82. New Zealand has not issued separate MAP guidance, but has made information on MAP available on the website of New Zealand's Inland Revenue. This information is available at:

www.ird.govt.nz/international/business/international-obligations/mutual-agreement-procedure/mutual-agreement-procedure-guidance.html

83. The information on the website includes basic information on New Zealand’s tax treaties and on its competent authority, the outline of the MAP process and the envisaged completion time for MAP cases. The webpage also explains how to file a MAP request and the specific information that should be included in such request. In more detail, the topics covered are:

- a. contact information of the office in charge of MAP cases in New Zealand
- b. the manner and form in which the taxpayer should submit its MAP request
- c. how the MAP functions in terms of the role of the competent authorities during MAP
- d. information on availability of arbitration
- e. relationship with domestic available remedies
- f. examples of cases for which MAP is available, which includes: transfer pricing cases, cases where there is an audit settlement between the taxpayer and the tax administration, cases concerning the application of anti-abuse provisions; cases concerning bona fide taxpayer-initiated foreign adjustments and the multi-year resolution of recurring issues
- g. implementation of MAP agreements
- h. interest and penalties.

84. The online information on MAP that New Zealand has published, described above, includes basic information on the availability and the use of MAP and how its competent authority conducts that procedure in practice. This also includes the information that the FTA MAP Forum agreed should be included in a jurisdiction’s MAP guidance, which concerns: (i) contact information of the competent authority or the office in charge of MAP cases and (ii) the manner and form in which the taxpayer should submit its MAP request.³

85. Although the information included in the webpage of New Zealand’s tax administration includes the relevant information on the MAP process, some subjects are not specifically discussed. This concerns information on:

- whether MAP is available in cases of multilateral disputes
- the possibility of suspension of tax collection during the course of a MAP
- the steps of the process and the timing of such steps for the implementation of MAP agreements, including any actions to be taken by taxpayers (if any).

Information and documentation to be included in a MAP request

86. New Zealand included in the webpage containing information on MAP a list of information that taxpayers should include in a MAP request. In that regard, the webpage notes that New Zealand is of the view that a pre-filing conference is a useful process to produce a well-informed understanding by all stakeholders on the substantive and procedural issues that could arise in relation to a MAP case. In New Zealand’s experience this will lead to a more focused approach, a reduction in the information to be provided by taxpayers in a MAP request and may also impact the time necessary to resolve the MAP case.

87. To facilitate the review of a MAP request by competent authorities and to have more consistency in the required content of MAP requests, the FTA MAP Forum agreed on guidance that jurisdictions could use in their domestic guidance on what information and

documentation taxpayers need to include in its request for MAP assistance. This agreed guidance is shown below. The website of New Zealand's Inland Revenue containing information on MAP, enumerates which items must be included in a request for MAP assistance (if available). These are checked in the following list:

- identity of the taxpayer(s) covered in the MAP request
- the basis for the request
- facts of the case
- analysis of the issue(s) requested to be resolved via MAP
- whether the MAP request was also submitted to the competent authority of the other treaty partner, and if so a copy of that submission
- whether the MAP request was also submitted to another authority under another instrument that provides for a mechanism to resolve treaty-related disputes, and if so, a copy of that submission (including all related documents), unless the content of both MAP submissions are exactly the same
- whether the issue(s) involved were dealt with previously
- 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.

88. Further to the above list, New Zealand also requires taxpayers to specify whether the MAP request is a protective claim.

89. One peer provided input in relation to this element and noted that New Zealand provides guidance on MAP, which includes the contact point within the Inland Revenue, the information that needs to be included in a MAP requests and various other information regarding the implementation of MAP agreements.

Anticipated modifications

90. New Zealand reported that it is in the process of updating its guidance on MAP, which *inter alia* concern the description of the process that will be followed when a MAP request is considered inadmissible or not justified, and information on the possibility for multilateral MAPs.

Conclusion

	Areas for improvement	Recommendations
[B.8]		<p>Although not required by the Action 14 Minimum Standard, in order to further improve the level of details included on the website, New Zealand could consider including information on:</p> <ul style="list-style-type: none"> • whether MAP is available in cases of multilateral disputes • the possibility of suspension of tax collection during the course of a MAP.

[B.9] Make MAP guidance available and easily accessible and publish MAP profile

Jurisdictions should take appropriate measures to make rules, guidelines and procedures on access to and use of the MAP available and easily accessible to the public and should publish their jurisdiction MAP profiles on a shared public platform pursuant to the agreed template.

91. The public availability and accessibility of a jurisdiction’s MAP guidance increases public awareness on access to and the use of the MAP in that jurisdiction. Publishing MAP profiles on a shared public platform further promotes the transparency and dissemination of the MAP programme.⁴

Rules, guidelines and procedures on access to and use of the MAP

92. The webpage of New Zealand’s tax administration containing information on MAP can be found at:

www.ird.govt.nz/international/business/international-obligations/mutual-agreement-procedure/mutual-agreement-procedure-guidance.html

93. This information was lastly updated in October 2016. As regards its accessibility, the information can easily be found on Inland Revenue’s website by searching for “mutual agreement procedure”.

MAP profile

94. The MAP profile of New Zealand is published on the website of the OECD. This MAP profile is complete, with detailed information in some sections and includes external links which provide extra information and guidance in all sections where they have relevance.⁵

Anticipated modifications

95. New Zealand did not indicate that it anticipates any modifications in relation to element B.9.

Conclusion

	Areas for improvement	Recommendations
[B.9]	-	As it has thus far made its guidance on MAP available and easily accessible and published its MAP profile, New Zealand should ensure that its future updates to its guidance on MAP continue to be publically available and easily accessible and that its MAP profile published on the shared public platform is updated if needed.

[B.10] Clarify in MAP guidance that audit settlements do not preclude access to MAP

Jurisdictions should clarify in their MAP guidance that audit settlements between tax authorities and taxpayers do not preclude access to MAP. If jurisdictions have an administrative or statutory dispute settlement/resolution process independent from the audit and examination functions and that can only be accessed through a request by the taxpayer, and jurisdictions limit access to the MAP with respect to the matters resolved through that process, jurisdictions should notify their treaty partners of such administrative or statutory processes and should expressly address the effects of those processes with respect to the MAP in their public guidance on such processes and in their public MAP programme guidance.

96. As explained under element B.5, an audit settlement can be valuable to taxpayers by providing certainty to them on their tax position. Nevertheless, as double taxation may not be fully eliminated by agreeing with such settlements, it is important that a jurisdiction's MAP guidance clarifies that in case of audit settlement taxpayers have access to the MAP. In addition, for providing clarity on the relationship between administrative or statutory dispute settlement or resolution processes and the MAP (if any), it is critical that both the public guidance on such processes and the public MAP programme guidance address the effects of those processes, if any. Finally, as the MAP represents a collaborative approach between treaty partners, it is helpful that treaty partners are notified of each other's MAP programme and limitations thereto, particularly in relation to the previously mentioned processes.

MAP and audit settlements in the MAP guidance

97. As previously discussed under B.5, it is under New Zealand's domestic law possible that taxpayers and the tax administration enter into audit settlements. The webpage of New Zealand's tax administration containing information on MAP explicitly confirms that taxpayers can submit a MAP request even if an audit settlement has been agreed domestically.

98. Peers raised no issues with respect to the availability of audit settlements and the inclusion of information hereon in the publically available guidance on MAP in New Zealand.

MAP and other administrative or statutory dispute settlement/resolution processes in available guidance

99. As previously discussed under element B.5, New Zealand has a review process in place that is administered by the Disputes Review Unit, which, however, is not considered as an administrative or statutory dispute settlement/resolution process that operates independently from the audit and examination functioning and can only be accessed through a request by the taxpayer. Regardless, the webpage of New Zealand's tax administration containing information on MAP also explicitly notes that access to MAP will not be limited for those matters that were resolved through the process at the level of the Disputes Review Unit.

100. All peers that provided input indicated not being aware of the existence of an administrative or statutory disputes settlement/resolution process in New Zealand that may limit access to MAP, which is logical given the fact that such a process is not in place in New Zealand.

Anticipated modifications

101. New Zealand did not indicate that it anticipates any modifications in relation to element B.10.

Conclusion

	Areas for improvement	Recommendations
[B.10]	-	-

Notes

1. If the taxpayer filed a fraudulent tax return, or if the return is wilfully misleading or omits income, then there is no time limit for amending a tax assessment.
2. Available at : <https://www.ird.govt.nz/resources/6/d/6d596555-f40c-4dc2-8bbe-c0461377b2d6/settlement-guidelines-s6a-settlements.pdf> (accessed on 18 July 2018).
3. Available at: www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf.
4. The shared public platform can be found at: www.oecd.org/ctp/dispute/country-map-profiles.htm.
5. www.oecd.org/tax/dispute/New%20Zealand-Dispute-Resolution-Profile.pdf.

References

- OECD (2016), *BEPS Action 14 on More Effective Dispute Resolution Mechanisms, Peer Review Documents*, www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf (accessed on 18 July 2018).
- OECD (2015a), *Model Tax Convention on Income and on Capital 2014 (Full Version)*, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264239081-en> (accessed on 18 July 2018).
- OECD (2015b), *Making Dispute Resolution Mechanisms More Effective, Action 14 – 2015 Final Report*, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264241633-en> (accessed on 18 July 2018).

Part C

Resolution of MAP cases

[C.1] Include Article 25(2), first sentence, of the OECD Model Tax Convention in tax treaties

Jurisdictions should ensure that their tax treaties contain a provision which requires that the competent authority who receives a MAP request from the taxpayer, shall endeavour, if the objection from the taxpayer appears to be justified and the competent authority is not itself able to arrive at a satisfactory solution, to resolve the MAP case by mutual agreement with the competent authority of the other Contracting Party, with a view to the avoidance of taxation which is not in accordance with the tax treaty.

102. It is of critical importance that in addition to allowing taxpayers to request for a MAP, tax treaties also include the equivalent of the first sentence of Article 25(2) of the OECD Model Tax Convention (OECD, 2015a), which obliges competent authorities, in situations where the objection raised by taxpayers are considered justified and where cases cannot be unilaterally resolved, to enter into discussions with each other to resolve cases of taxation not in accordance with the provisions of a tax treaty.

Current situation of New Zealand’s tax treaties

103. Out of New Zealand’s 48 tax treaties, 37 contain a provision equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015a) requiring its competent authority to endeavour – when the objection raised is considered justified and no unilateral solution is possible – to resolve by mutual agreement with the competent authority of the other treaty partner the MAP case with a view to the avoidance of taxation which is not in accordance with the tax treaty. Ten of New Zealand’s tax treaties do not contain any such provision. The remaining treaty does contain a provision that is based on Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015a), but also includes additional language that limits the possibility to discuss cases bilaterally, as this additional language reads: “... provided that in the case of ... the competent authority is notified of the case within four and a half years from the due date or the date of filing the return in ..., whichever is later”. This provision is therefore considered not being the equivalent of Article 25(2), first sentence.

Anticipated modifications

Multilateral Instrument

104. New Zealand signed the Multilateral Instrument. Article 16(4)(b)(i) of that instrument stipulates that Article 16(2), first sentence – containing the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015a) – will apply in the absence of a provision in tax treaties that is equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015a). In other words, in the absence of this equivalent, Article 16(4)(b)(i) of the Multilateral Instrument will modify the applicable tax treaty to include such equivalent. However, this shall only apply if both contracting parties to the applicable tax treaty have listed this treaty as a covered tax agreement under the Multilateral Instrument and insofar as both notified, pursuant to Article 16(6)(c)(i), the depositary that this treaty does not contain the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015a).

105. In regard of the 11 tax treaties identified above that are considered not to contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015a), New Zealand listed two treaties as a covered tax agreement under the Multilateral Instrument and for both of them made a notification, pursuant to Article 16(6)(c)(i), that they do not contain a provision described in Article 16(4)(b)(i). These two treaty partners also made such notification. Therefore, at this stage the Multilateral Instrument will, upon entry into force, modify two of 11 tax treaties identified above to include the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015a).

Bilateral modifications

106. New Zealand further reported that when the tax treaties that do not include the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015a) and will not be modified by the Multilateral Instrument, it intends to update them via bilateral negotiations with a view to be compliant with element C.1. New Zealand thereby reported that it will prioritise pending negotiations and with those treaty partners with whom they actually have MAP cases. For the other treaty partners, it will address any deficiency in the treaties when the opportunity arises. In this respect, New Zealand is already in negotiations with three treaty partners that do not contain the required provision. In addition, New Zealand reported it will seek to include Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015a) in all of its future tax treaties.

Peer input

107. All peers that provided input mentioned that their treaty with New Zealand meets the requirement under element C.1.

108. For the 11 treaties identified that do not include the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015a), the relevant treaty partners did not provide peer input.

Conclusion

	Areas for improvement	Recommendations
[C.1]	11 out of 48 tax treaties do not contain a provision that is equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015a).	<p>New Zealand should as quickly as is possible ratify the Multilateral Instrument to incorporate the equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015a) in those two treaties that currently do not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force.</p> <p>For the remaining nine treaties that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015a) following its entry into force, New Zealand should, in accordance with its plan, request the inclusion of the required provision via bilateral negotiations for those treaties where no negotiations are pending.</p> <p>In addition, New Zealand should maintain its stated intention to include the required provision in all future tax treaties.</p>

[C.2] Seek to resolve MAP cases within a 24-month average timeframe

Jurisdictions should seek to resolve MAP cases within an average time frame of 24 months. This time frame applies to both jurisdictions (i.e. the jurisdiction which receives the MAP request from the taxpayer and its treaty partner).

109. As double taxation creates uncertainties and leads to costs for both taxpayers and jurisdictions, and as the resolution of MAP cases may also avoid (potential) similar issues for future years concerning the same taxpayers, it is important that MAP cases are resolved swiftly. A period of 24 months is considered as an appropriate time period to resolve MAP cases on average.

Reporting of MAP statistics

110. Statistics regarding all tax treaty related disputes concerning New Zealand are published on the website of the OECD as of 2007.¹

111. The FTA MAP Forum has agreed on rules for reporting of MAP statistics (“**MAP Statistics Reporting Framework**”) for MAP requests submitted on or after January 1, 2016 (“**post-2015 cases**”). Also, for MAP requests submitted prior to that date (“**pre-2016 cases**”), the FTA MAP Forum agreed to report MAP statistics on the basis of an agreed template. New Zealand provided its MAP statistics pursuant to the MAP Statistics Reporting Framework within the given deadline, including all cases involving New Zealand and of which its competent authority was aware. The statistics discussed below include both pre-2016 and post-2015 cases and the full statistics are attached to this report as Annexes B and C respectively² and should be considered jointly for an understanding of the MAP caseload of New Zealand. With respect to post-2015 cases, New Zealand reported having reached out to all of its MAP partners, except for two jurisdictions that are not reporting their MAP statistics under the MAP Statistics Reporting Framework, with a view to have their MAP statistics matching. In that regard, New Zealand reported that it could match its statistics with all of its MAP partners except for the two mentioned above.

Monitoring of MAP statistics

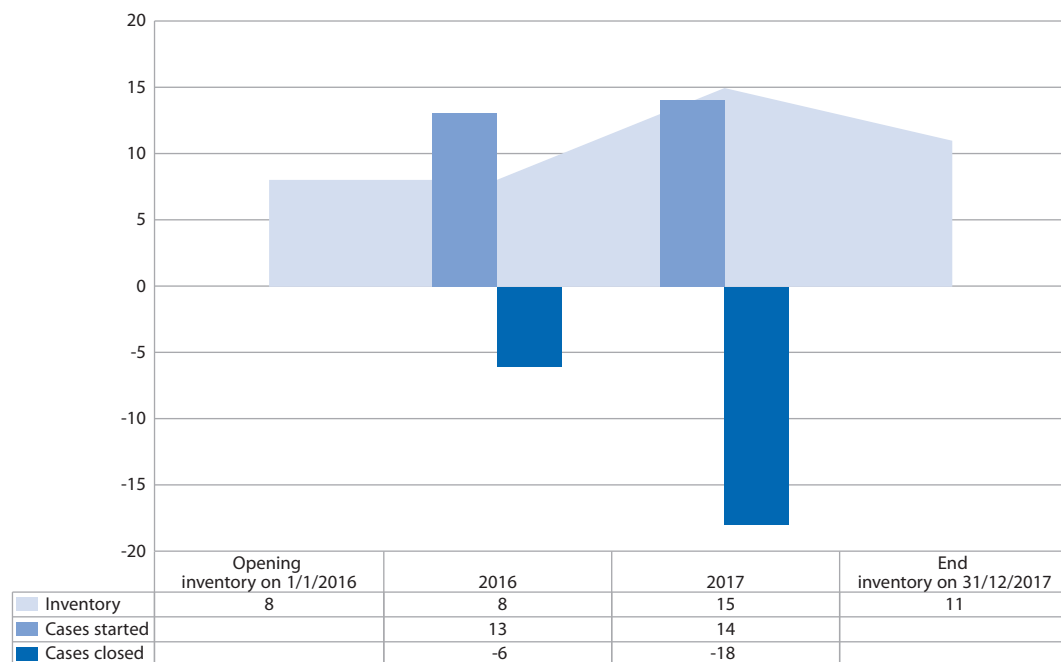
112. New Zealand reported that it has a system in place that registers and monitors its MAP cases as to their progress.

Analysis of New Zealand's MAP caseload

Global overview

113. Figure C.1 shows the evolution of New Zealand's MAP caseload over the Statistics Reporting Period.

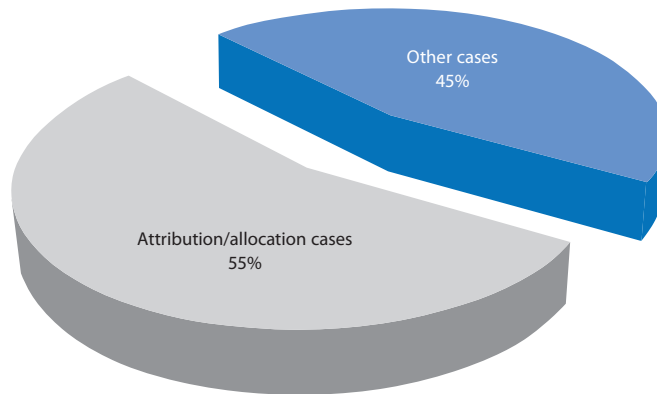
Figure C.1. Evolution of New Zealand's MAP caseload



114. At the beginning of the Statistics Reporting Period, New Zealand had eight pending MAP cases, of which three were attribution/allocation cases and five other MAP cases.³ At the end of the Statistics Reporting Period, New Zealand had ten MAP cases in its inventory, of which five are attribution/allocation cases and five are other MAP cases. New Zealand's MAP caseload has increased slightly during the Statistics Reporting Period, but, as will be further discussed below, it also resolved all of its pending cases that were initiated prior to or in 2016.

115. The breakdown of the end inventory can be shown as in Figure C.2.

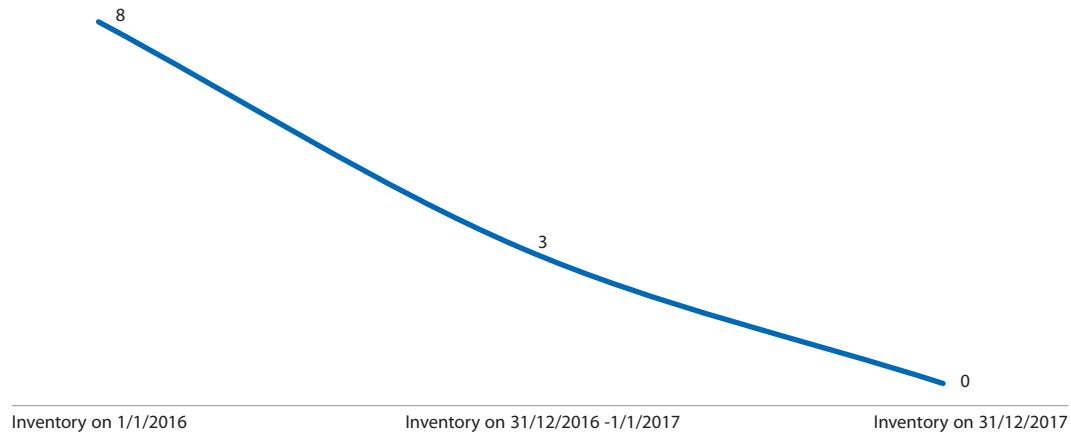
Figure C.2. End inventory on 31 December 2017 (10 cases)



Pre-2016 cases

116. Figure C.3 shows the evolution of New Zealand's pre-2016 MAP cases over the Statistics Reporting Period.

Figure C.3. Evolution of New Zealand's MAP inventory Pre-2016 cases



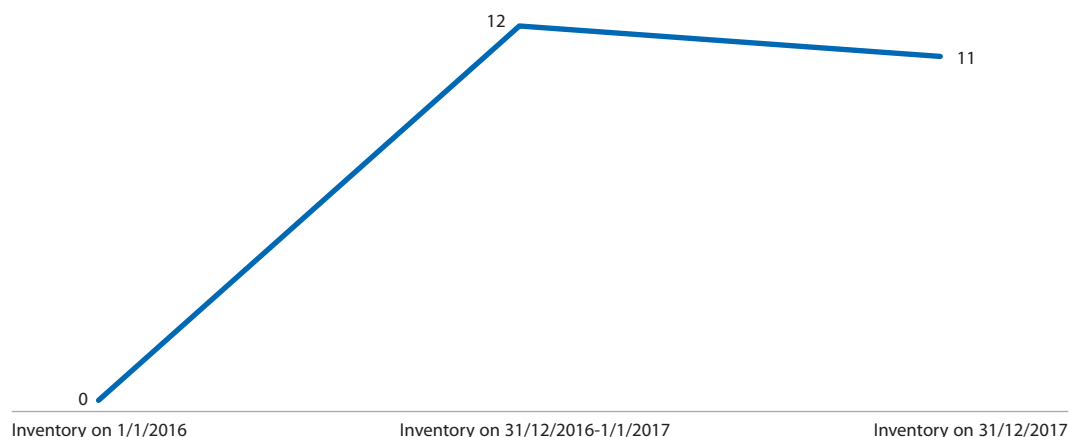
117. At the beginning of the Statistics Reporting Period, New Zealand's MAP inventory of pre-2016 MAP cases consisted of eight cases, of which were three attribution/allocation cases and five other cases. As New Zealand resolved all of its pre-2016 cases during this period, the total inventory of pre-2016 cases had decreased to nil cases. The decrease in the number of pre-2016 MAP cases is shown in the table below:

Pre-2016 cases only	Evolution of total MAP caseload in 2016	Evolution of total MAP caseload in 2017	Cumulative evolution of total MAP caseload over the two years (2016+2017)
Attribution/allocation cases	-33%	-100%	-100%
Other cases	-80%	-100%	-100%

Post-2015 cases

118. Figure C.4 shows the evolution of New Zealand’s post-2015 MAP cases over the Statistics Reporting Period.

Figure C.4. Evolution of New Zealand’s MAP inventory Post-2015 cases



119. In total, 27 MAP cases started during the Statistics Reporting Period, nine of which concerned attribution/allocation cases and 18 other cases. At the end of this period the total number of post-2015 cases in the inventory was ten cases, consisting of five attribution/allocation cases and five other cases. Conclusively, New Zealand closed 17 post-2015 cases during the Statistics Reporting Period, four of them being attribution/allocation cases and 13 of them being other cases. During the Statistics Reporting Period, New Zealand closed all post-2015 cases that started in 2016. As a result thereof, the MAP cases remaining in New Zealand’s inventory as of 31 December 2017, only consists of MAP requests submitted in 2017, which is likely to contribute to an average time to resolve MAP cases within the pursued average of 24 months.

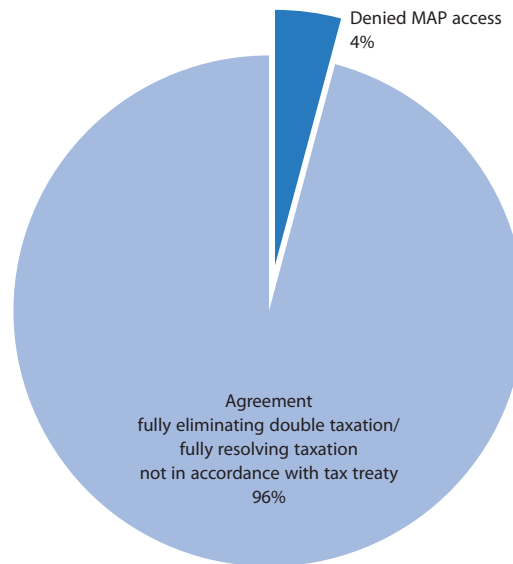
120. The number of post-2015 cases closed as compared to the number of post-2015 cases started during the Statistics Reporting Period is shown in the table below.

Post-2015 cases only	% of cases closed in 2016 compared to cases started in 2016	% of cases closed in 2017 compared to cases started in 2017	Cumulative % of cases closed compared to cases started over the two years (2016+2017)
Attribution/allocation cases	0%	67%	44%
Other cases	10%	150%	72%

Overview of cases closed during the Statistics Reporting Period*Reported outcomes*

121. During the Statistics Reporting Period, New Zealand in total closed 25 MAP cases for which the outcomes shown in Figure C.5 were reported.

Figure C.5. Cases closed during the Statistics Reporting Period (25 cases)



122. Figure C.5 shows that during the Statistics Reporting Period, almost all cases that New Zealand was actively involved in, and were closed, resulted in an agreement that fully eliminated double taxation or fully resolved taxation not in accordance with the tax treaty. This applies both to pre-2016 and post-2015 MAP cases, and also to attribution/allocation cases and other cases. The one case that was closed with the outcome denied MAP access, it was the competent authority of New Zealand's treaty partner that made this decision.

Average timeframe needed to resolve MAP cases

All cases closed during the Statistics Reporting Period

123. The average time needed to close MAP cases during the Statistics Reporting Period was 11.79 months. This average can be broken down as follows:

	Number of cases	Start date to End date (in months)
Attribution/Allocation cases	7	14.48
Other cases	18	10.75
All cases	25	11.79

Pre-2016 cases

124. For pre-2016 cases New Zealand, reported that on average it needed 22.13 months to close attribution/allocation cases and 20.78 months to close other cases. This resulted in an average time needed of 21.29 months to close eight pre-2016 cases. For the purpose of computing the average time needed to resolve pre-2016 cases, New Zealand reported that it uses the following dates:

- *Start date*: five weeks from the receipt of the MAP request, where this request has been initiated in New Zealand, otherwise the date of notification of the MAP request from the other competent authority
- *End date*: the date of the letter from New Zealand's competent authority informing the taxpayer of the final outcome of the MAP request.

Post-2015 cases

125. As a preliminary remark, it should be noted that the period for assessing post-2015 MAP statistics only comprises 24 months.

126. For post-2015 cases New Zealand, reported that on average it needed 8.74 months to close attribution/allocation cases and 6.89 months to close other cases. This resulted in an average time needed of 7.33 months to close 17 post-2015 cases.

Peer input

127. As will be discussed in more detail under element C.3, all peers that provided input reported having a good working relationship with New Zealand's competent authority and the resolution of MAP cases. Three peers particularly noted that either New Zealand's competent authority endeavours to resolve MAP cases in a reasonable timeframe, or that their experience is that MAP agreements are found in a timely manner.

Anticipated modifications

128. New Zealand did not indicate that it anticipates any modifications in relation to element C.2.

Conclusion

	Areas for improvement	Recommendations
[C.2]	New Zealand submitted comprehensive MAP statistics on time on the basis of the MAP Statistics Reporting Framework for the years 2016 and 2017. Based on the information provided by New Zealand's MAP partners, its post-2015 MAP statistics actually match those of its treaty partners as reported by the latter. New Zealand's MAP statistics show that during the Statistics Reporting Period it closed 63% (17 out of 27 cases) of its post-2015 cases in 7.33 months on average. In that regard, New Zealand is recommended to seek to resolve the remaining 37% of the post-2015 cases pending on 31 December 2017 (ten cases, all of which started in 2017) within a timeframe that results in an average timeframe of 24 months for all post-2015 cases.	

[C.3] Provide adequate resources to the MAP function

Jurisdictions should ensure that adequate resources are provided to the MAP function.

129. Adequate resources, including personnel, funding and training, are necessary to properly perform the competent authority function and to ensure that MAP cases are resolved in a timely, efficient and effective manner.

Description of New Zealand's competent authority

130. Under New Zealand's tax treaties the competent authority function is assigned to the Commissioner of the Inland Revenue. This function is sub mandated to the International Revenue Strategy department, which is a sub-department of the Business Planning and Integration department. New Zealand reported that as per February 2018 a restructuring has taken place within the Inland Revenue, following which the International Revenue Strategy is placed within the department on Customer and Compliance Services for businesses.

131. The International Revenue Strategy department comprises 13 full time employees, including two managers. While any of these employees may be involved in handling MAP

cases, New Zealand reported that in practice four employees are working on MAPs among other tasks given the relatively low MAP inventory. The authority to handle MAP cases concerns both attribution/allocation cases and other MAP cases.

132. Concerning the training of employees involved in handling MAP cases, New Zealand noted that such training is conducted largely in a one-on-one setting using practical cases that are closely supervised by the head manager and supplemented by written training materials.

133. New Zealand reported that, if necessary, funding is made available for travel to enable face-to-face meetings with other competent authorities and that it considers the current resources available for the MAP function as sufficient. Where more funding or resources appears to be necessary, assistance may be asked from other departments within Inland Revenue, such as the Investigations and Advice or the Policy and Strategy departments. If resources for the MAP function were to become insufficient to handle inventory, New Zealand reported that in the short term qualified staff would be hired from other departments within Inland Revenue and in the medium term would hire permanent staff should the number of MAP cases continue to increase.

Monitoring mechanism

134. New Zealand reported that Inland Revenue closely monitors the work flows, including that of the staff within the competent authority and also tracks progress of MAP cases.

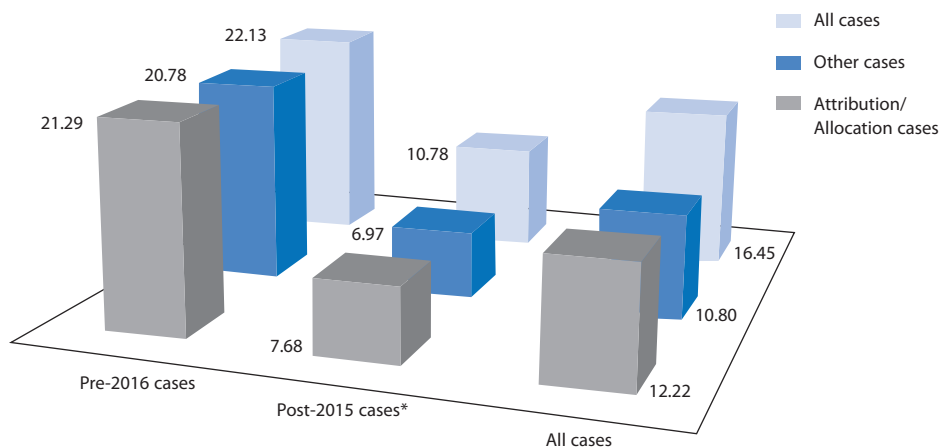
Practical application

MAP statistics

135. As discussed under element C.2, New Zealand closed its MAP cases during the Statistics Reporting Period within the pursued 24-month average. This can be illustrated by Figure C.6.

136. Based on these figures, it follows that on average it took New Zealand 11.79 months to close MAP cases during the Statistics Reporting Period, by which New Zealand is considered to be adequately resourced.

Figure C.6. Average time (in months) to close cases in 2016 or 2017



* Note that post-2015 cases only concern cases started and closed during 2016 or 2017.

Peer input

137. Of the nine peers that provided input, seven reported having experience with New Zealand in handling and resolving MAP cases. For six of these seven peers, the number of MAP cases with New Zealand, however, is limited. Nevertheless, they all noted their relationship was positive and appreciated the easiness of contact with New Zealand's competent authority. One of these peers noted it had an excellent working relationship with New Zealand's competent authority as regards the administration and execution of the MAP programme. Another peer reported its co-operative and productive MAP relationship with New Zealand. A third peer noted that the contacts with New Zealand's competent authority are easy and takes place via email while another of these peers stated that communication is efficient and effective. Lastly, a fourth peer reported that it also has a co-operative relationship with New Zealand's competent authority, for which it considers the communication to be efficient and effective, despite the limited MAP inventory. This peer further stated that in its experience both competent authorities were able to resolve non-transfer pricing cases in a timely and principled manner. It also mentioned it expects this positive relationship to continue.

138. The seventh peer reported having more experience with New Zealand in handling and resolving MAP cases. Like the peers mentioned above, this peer also reported having a positive, efficient and open relationship with New Zealand's competent authority. It also highlighted that it considers New Zealand's competent authority as being co-operative and professional.

139. Concerning the resolution of cases, all peers reported not being aware of any impediments to the MAP process. Furthermore, one peer particularly pointed out that it found New Zealand's competent authority very active in resolving MAP cases in a reasonable timeframe. In this respect, most peers specified no suggestions for improvement, although one suggested developing best practice papers/memorandum of understanding that this peer has with other jurisdictions. This peer noted that such documents have largely been a mechanism to manage communication and timeframes, which could be seen as having a positive step towards achieving improvements. Another peer made no specific suggestion for improvement, but expressed its belief that continuing periodic e-mail and telephone communications would help facilitate their MAP relationship.

Anticipated modifications

140. New Zealand did not indicate that it anticipates any modifications in relation to element C.3.

Conclusion

	Areas for improvement	Recommendations
[C.3]	-	New Zealand should continue to monitor whether it has adequate resources in place to ensure that future MAP cases are resolved in a timely, efficient and effective manner.

[C.4] Ensure staff in charge of MAP has the authority to resolve cases in accordance with the applicable tax treaty

Jurisdictions should ensure that the staff in charge of MAP processes have the authority to resolve MAP cases in accordance with the terms of the applicable tax treaty, in particular without being dependent on the approval or the direction of the tax administration personnel who made the adjustments at issue or being influenced by considerations of the policy that the jurisdictions would like to see reflected in future amendments to the treaty.

141. Ensuring that staff in charge of MAP can and will resolve cases, absent any approval/direction by the tax administration personnel directly involved in the adjustment and absent any policy considerations, contributes to a principled and consistent approach to MAP cases.

Functioning of staff in charge of MAP

142. New Zealand reported that its competent authority has full autonomy to enter into MAP agreements. New Zealand further reported that the final decision on entering such agreements is made by the Manager of International Revenue Strategy department, which, as mentioned previously, is the division where the competent authority function is placed. In this respect, New Zealand noted that its competent authority operates independent from Inland Revenue’s audit function. In practice, it may be that the competent authority seeks assistance from other departments within the Inland Revenue when there is some doubt on an individual MAP case. For example, the Investigations and Advice department may be consulted to ensure that the facts of a case are described and interpreted correctly. The Policy and Strategy department may also be consulted for the interpretation of tax treaties in non-routine cases to ensure that the relevant tax treaty is applied correctly.

143. In regard of the above, New Zealand reported that staff in charge of MAP in practice operates independently and has the authority to resolve MAP cases without being dependent on the approval/direction of the tax administration personnel directly involved in the adjustment and the process for negotiating MAP agreements is not influenced by policy considerations.

Practical application

144. All peers that provided input reported not being aware of any impediments in New Zealand to perform its MAP function in the absence of approval or the direction of the tax administration personnel who made the adjustments at issue or being influenced by considerations of the policy. One peer specifically mentioned that it is not being aware that staff in charge of the MAP in New Zealand is dependent on the approval of MAP agreements by the personnel within the tax administration that made the adjustment under review.

Anticipated modifications

145. New Zealand did not indicate that it anticipates any modifications in relation to element C.4.

Conclusion

	Areas for improvement	Recommendations
[C.4]	-	As it has done thus far, New Zealand should continue to ensure that its competent authority has the authority, and uses that authority in practice, to resolve MAP cases without being dependent on approval or direction from the tax administration personnel directly involved in the adjustment at issue and absent any policy considerations that New Zealand would like to see reflected in future amendments to the treaty.

[C.5] Use appropriate performance indicators for the MAP function

Jurisdictions should not use performance indicators for their competent authority functions and staff in charge of MAP processes based on the amount of sustained audit adjustments or maintaining tax revenue.

146. For ensuring that each case is considered on its individual merits and will be resolved in a principled and consistent manner, it is essential that any performance indicators for the competent authority function and for the staff in charge of MAP processes are appropriate and not based on the amount of sustained audit adjustments or aim at maintaining a certain amount of tax revenue.

Performance indicators used by New Zealand

147. New Zealand reported that it endeavours to complete MAP cases within 12 months of receiving a request for assistance. In that regard, for each calendar year the International Revenue Strategy department reports the number of cases that have been resolved and the average cycle time to completion.

148. As a matter of general policy, New Zealand further reported one of the objectives is to endeavour to resolve MAP cases as expeditiously as possible, thereby taking into account the complexity of the case at hand and the level of co-operation by the other competent authority concerned in that specific case. Furthermore, while not using specific targets for staff handling MAP cases, New Zealand mentioned that staff within its competent authority is expected to follow the OECD Transfer Pricing Guidelines for transfer pricing cases and to endeavour to ensure that cases are resolved in a principled and timely manner.

149. The Final Report on Action 14 (OECD, 2015b) includes examples of performance indicators that are considered appropriate. These indicators are shown below and are for New Zealand presented in the form of a checklist:

- number of MAP cases resolved
- consistency (i.e. a treaty should be applied in a principled and consistent manner to MAP cases involving the same facts and similarly-situated taxpayers)
- time taken to resolve a MAP case (recognising that the time taken to resolve a MAP case may vary according to its complexity and that matters not under the control of a competent authority may have a significant impact on the time needed to resolve a case).

150. Further to the above, New Zealand also reported that it does not use any performance indicators for staff in charge of MAP that are related to the outcome of MAP discussions in terms of the amount of sustained audit adjustments or maintained tax revenue. In other words, staff in charge of MAP is not evaluated on the basis of the material outcome of MAP discussions.

Practical application

151. Peers generally provided no specific input relating to this element, but one peer noted not being aware of the use of performance indicators by New Zealand that are based on the amount of sustained audit adjustments or maintaining tax revenue.

Anticipated modifications

152. New Zealand did not indicate that it anticipates any modifications in relation to element C.5.

Conclusion

	Areas for improvement	Recommendations
[C.5]	-	As it has done thus far, New Zealand should continue to use appropriate performance indicators.

[C.6] Provide transparency with respect to the position on MAP arbitration

Jurisdictions should provide transparency with respect to their positions on MAP arbitration.

153. The inclusion of an arbitration provision in tax treaties may help ensure that MAP cases are resolved within a certain timeframe, which provides certainty to both taxpayers and competent authorities. In order to have full clarity on whether arbitration as a final stage in the MAP process can and will be available in jurisdictions it is important that jurisdictions are transparent on their position on MAP arbitration.

Position on MAP arbitration

154. New Zealand reported that there are no domestic law limitations for including MAP arbitration in its tax treaties. New Zealand's tax treaty policy is to include a mandatory and binding arbitration provision in its bilateral tax treaties.

155. Furthermore, New Zealand was a participant in the sub-group on arbitration as part of the group which negotiated the Multilateral Instrument. In that regard, New Zealand opted for part VI of the Multilateral Instrument, which includes a mandatory and binding arbitration provision.⁴ Pursuant to Article 26(4) New Zealand reserved the right not to apply part VI to the two treaties mentioned below that already provide for a mandatory and binding arbitration procedure.

Practical application

156. To date, New Zealand has incorporated an arbitration clause in two of its 48 tax treaties as a final stage to the MAP. Both of these arbitration clauses are equivalent to Article 25(5) of the OECD Model Tax Convention (OECD, 2015a). However, in one of these treaties the scope of the arbitration procedure is limited to issues of fact and issues where both competent authorities agreed that they can be dealt with in arbitration. Furthermore, in one of these treaties a protocol provision is incorporated that details how the arbitration procedure should be conducted.

Anticipated modifications

157. New Zealand did not indicate that it anticipates any modifications in relation to element C.6.

Conclusion

	Areas for improvement	Recommendations
[C.6]	-	-

Notes

1. Available at: www.oecd.org/tax/dispute/mutual-agreement-procedure-statistics.htm. These statistics are up to and include fiscal year 2016.
2. For post-2015 cases, if the number of MAP cases in New Zealand’s inventory at the beginning of the Statistics Reporting Period plus the number of MAP cases started during the Statistics Reporting Period was more than five, New Zealand reports its MAP caseload on a jurisdiction-by-jurisdiction basis. This rule applies for each type of cases (attribution/allocation cases and other cases).
3. For pre-2016 cases and post-2015 cases New Zealand follows the MAP Statistics Reporting Framework for determining whether a case is considered an attribution/allocation MAP case. Annex D of MAP Statistics Reporting Framework provides that “an attribution/allocation MAP case is a MAP case where the taxpayer’s MAP request relates to (i) the attribution of profits to a permanent establishment (see e.g. Article 7 of the OECD Model Tax Convention); or (ii) the determination of profits between associated enterprises (see e.g. Article 9 of the OECD Model Tax Convention), which is also known as a transfer pricing MAP case”.
4. An overview of New Zealand’s position on the Multilateral Instrument is available at: www.oecd.org/tax/treaties/beps-mli-position-new-zealand.pdf.

References

- OECD (2016), *BEPS Action 14 on More Effective Dispute Resolution Mechanisms, Peer Review Documents*, www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf (accessed on 18 July 2018).
- OECD (2015a), *Model Tax Convention on Income and on Capital 2014 (Full Version)*, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264239081-en> (accessed on 18 July 2018).
- OECD (2015b), *Making Dispute Resolution Mechanisms More Effective, Action 14 – 2015 Final Report*, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264241633-en> (accessed on 18 July 2018).

Part D

Implementation of MAP agreements

[D.1] Implement all MAP agreements

Jurisdictions should implement any agreement reached in MAP discussions, including by making appropriate adjustments to the tax assessed in transfer pricing cases.

158. In order to provide full certainty to taxpayers and the jurisdictions, it is essential that all MAP agreements are implemented by the competent authorities concerned.

Legal framework to implement MAP agreements

159. New Zealand reported that section BH(1)(4) of the Income Tax Act of 2007 states that tax treaty provisions override domestic law. In regard of MAP agreements, New Zealand noted that when its tax treaty includes a provision equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015), this provision overrides the relevant section of its domestic law, thus ensuring that there are no time limits for implementing MAP agreements.

160. In the absence of the second sentence of Article 25(2) of the OECD Model Tax Convention (OECD, 2015) in a tax treaty, the Tax Administration Act applies, which includes a statute of limitation for increasing an amount of tax assessed (or reducing a taxpayer's amount of net losses) of four years as from the end of the fiscal year in which the taxpayer submitted its tax return.¹ In practice and for transfer pricing cases, this filing period may be extended to five and a half years after the end of the fiscal year in which the profit accrued.² This time period can also be extended to a maximum of six years if the Commissioner of Inland Revenue exercises her discretion under section 78B of the Tax Administration Act of 1994 in cases concerning tax credits for foreign income taxes or attributed controlled foreign corporation income.

161. New Zealand further reported that under the Tax Administration Act no time limit applies for decreasing an amount of tax assessed (or for increasing a taxpayer's amount of net losses). In this respect, New Zealand clarified that because it operates a self-assessment system, taxpayers generally request an amendment of its tax position with New Zealand's Inland Revenue, whereby the commissioner of the Inland Revenue has the discretion to follow-up this request. Specifically concerning transfer pricing cases and cases concerning the attribution of profits to permanent establishments, New Zealand reported that where a MAP agreement results in a reduced tax liability in New Zealand, it is common practice to exercise the discretion to implement the MAP agreement regardless of when the original tax assessment was issued. Nevertheless, this system of discretion bears the risk that not all MAP agreements will be implemented where the tax treaty does not contain the second sentence of Article 25(2) of the OECD Model Tax Convention (OECD, 2015).

162. Concerning the process of implementing MAP agreements, New Zealand reported that when its competent authority enters into a MAP agreement, it will inform the taxpayer, but the taxpayer's consent is not a prerequisite for implementation. Concerning the implementation process, New Zealand reported that the competent authority will liaise with the relevant department within the Inland Revenue, which is subsequently responsible for implementing the agreement.

Practical application

163. New Zealand reported that since 1 January 2015 it has reached the following number of MAP agreements:

Year	MAP agreements
2015	18
2016	6
2017	17

164. In view of these MAP agreements, all required an implementation by New Zealand. In this respect, New Zealand reported that all of them have been implemented. Concerning the process of implementation, it further noted that its competent authority is in close contact with the department within the Inland Revenue that implements a MAP agreement and, where necessary, refund taxes, to ensure that the MAP agreement is fully implemented. In more detail, the department within the Inland Revenue that has to implement the MAP agreement has to confirm completion with New Zealand's competent authority. When such confirmation is not given, the competent authority personnel will verify the implementation in the central computer system.

165. The competent authority follows-up with taxpayers to ensure that also at the level of the treaty partner the MAP agreement is fully implemented.

166. All peers that provided input reported that they were not aware of any MAP agreement reached on or after 1 January 2015 that was not implemented by New Zealand.

Anticipated modifications

167. New Zealand reported that its Parliament is currently considering changing the time period for making transfer pricing adjustments from four to seven years from the end of the fiscal year in which the taxpayer submitted its tax return (or eight and a half years after the end of the fiscal year in which the profit occurred).

Conclusion

	Areas for improvement	Recommendations
[D.1]	As will be discussed under element D.3 not all of New Zealand's tax treaties contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015). Therefore, there is a risk that for those tax treaties that do not contain that provision, not all MAP agreements will be implemented in cases where the agreement requires a downward adjustment to be made, as this is subject to the discretion of the commissioner of the Inland Revenue.	Even though New Zealand has implemented all MAP agreements thus far, it should ensure that in the absence of the required provisions discussed under element D.3 implementation of MAP agreements is not obstructed by time limits in its domestic law.

[D.2] Implement all MAP agreements on a timely basis

Agreements reached by competent authorities through the MAP process should be implemented on a timely basis.

168. Delay of implementation of MAP agreements may lead to adverse financial consequences for both taxpayers and competent authorities. To avoid this and to increase certainty for all parties involved, it is important that the implementation of any MAP agreement is not obstructed by procedural and/or statutory delays in the jurisdictions concerned.

Theoretical timeframe for implementing mutual agreements

169. New Zealand reported that once a MAP agreement is reached, its policy is to implement the agreement as quickly as possible. Both for cases where the agreement entails that New Zealand can levy additional taxes or need to refund taxes already levied, the aim is to implement MAP agreements within one month after conclusion. The webpage of New Zealand's tax administration containing information on MAP also includes this information.

Practical application

170. According to New Zealand, its International Revenue Strategy department monitors its internal systems to ensure domestic assessment and/or refund are timely effectuated and also checks with taxpayers to ensure other tax authorities have proceeded with the necessary assessment and/or refund action so that MAP agreements are fully and timely implemented.

171. New Zealand reported that all MAP agreements that were reached on or after 1 January 2015 have been or will be implemented on a timely basis. In that regard it emphasised that no cases of noticeable delays have occurred, although during the Review Period its competent authority had to correspond several times with two tax authorities that were considered to be slow in implementing MAP agreements in those cases where the agreement entailed granting of relief by the treaty partner to taxpayers in New Zealand.

172. All peers that provided input have not indicated experiencing any problems with New Zealand regarding the implementation of MAP agreements reached on a timely basis.

Anticipated modifications

173. New Zealand did not indicate that it anticipates any modifications in relation to element D.2.

Conclusion

	Areas for improvement	Recommendations
[D.2]	-	As it has done thus far, New Zealand should continue to implement all MAP agreements on a timely basis if the conditions for such implementation are fulfilled.

[D.3] Include Article 25(2), second sentence, of the OECD Model Tax Convention in tax treaties or alternative provisions in Article 9(1) and Article 7(2)

Jurisdictions should either (i) provide in their tax treaties that any mutual agreement reached through MAP shall be implemented notwithstanding any time limits in their domestic law, or (ii) be willing to accept alternative treaty provisions that limit the time during which a Contracting Party may make an adjustment pursuant to Article 9(1) or Article 7(2), in order to avoid late adjustments with respect to which MAP relief will not be available.

174. In order to provide full certainty to taxpayers it is essential that implementation of MAP agreements is not obstructed by any time limits in the domestic law of the jurisdictions concerned. Such certainty can be provided by either including the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015) in tax treaties, or alternatively, setting a time limit in Article 9(1) and Article 7(2) for making adjustments to avoid that late adjustments obstruct granting of MAP relief.

Current situation of New Zealand's tax treaties

175. As discussed under element D.1, New Zealand's domestic legislation includes a statute of limitations of four years from the year of assessment for implementing MAP agreements, unless overridden by tax treaties.

176. Out of New Zealand's 48 tax treaties, 28 contain a provision equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015) requiring that any mutual agreement reached through MAP shall be implemented notwithstanding any time limits in its domestic law.³ Furthermore, 17 tax treaties do not contain such equivalent or the alternative provisions to Article 9(1) and Article 7(2), setting a time limit for making primary adjustments. One other treaty also does not include this provision but includes the equivalent of the alternative of Article 9(1) setting a time limit for imposing transfer pricing adjustments.

177. For the remaining two treaties the following analysis is made:

- One treaty does not contain the second sentence of Article 25(2) of the OECD Model Tax Convention (OECD, 2015), but includes a provision that stipulates that a MAP agreement may be implemented within a period of six years from the presentation of the case, which is not the equivalent of the second sentence of Article 25(2).
- One treaty stipulates that MAP agreements will only be implemented when a MAP request has been notified in due time to the competent authority other than that of New Zealand. Where it concerns this other contracting state, a MAP agreement will only be implemented within ten years as from the due date of the filing of a tax return, or if later, the time period under that other contracting state's domestic law. Therefore this treaty is considered not containing the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015).

Anticipated modifications

Multilateral Instrument

178. New Zealand signed the Multilateral Instrument. Article 16(4)(b)(ii) of that instrument stipulates that Article 16(2), second sentence – containing the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015) – will apply in the

absence of a provision in tax treaties that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015). In other words, in the absence of this equivalent, Article 16(4)(b)(ii) of the Multilateral Instrument will modify the applicable tax treaty to include such equivalent. However, this shall only apply if both contracting parties to the applicable tax treaty have listed this treaty as a covered tax agreement under the Multilateral Instrument and insofar as both, pursuant to Article 16(6)(c)(ii), notified the depositary that this treaty does not include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015). Article 16(4)(b)(ii) of the Multilateral Instrument does will for a tax treaty not take effect if one or both of the treaty partners has, pursuant to Article 16(5)(c), reserved the right not to apply the second sentence of Article 16(2) of that instrument for all of its covered tax agreements under the condition that: (i) any MAP agreement shall be implemented notwithstanding any time limits in the domestic laws of the contracting states, or (ii) the jurisdiction intends to meet the Action 14 Minimum Standard by accepting in its tax treaties the alternative provisions to Article 9(1) and 7(2) concerning the introduction of a time limit for making transfer pricing profit adjustments.

179. In regard of the 20 tax treaties identified above that are considered not to contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015), New Zealand listed 11 as covered tax agreements under the Multilateral Instrument and for all of them made a notification, pursuant to Article 16(6)(c)(ii), that they do not contain a provision described in Article 16(4)(b)(ii). Of the relevant 11 treaty partners, one is not a signatory to the Multilateral Instrument, whereas one did not list its treaty with New Zealand as a covered tax agreement and one reserved the right on the basis of Article 16(5)(c), not to apply the second sentence of Article 16(2) of the Multilateral Instrument to its tax treaty with New Zealand. All remaining eight treaty partners have also made a notification on the basis of Article 16(6)(c)(ii). Therefore, at this stage the Multilateral Instrument will, upon entry into force, modify eight of 20 tax treaties identified above to include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015).

Bilateral modifications

180. New Zealand further reported that when tax treaties do not include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015) or both alternatives provided for in Articles 9(1) and 7(2) and which will not be modified by the Multilateral Instrument, it intends to update them via bilateral negotiations with a view to be compliant with element D.3. New Zealand thereby reported that it will prioritise pending negotiations and with those treaty partners with whom they actually have MAP cases. For the other treaty partners, it will address any deficiency in the treaties when the opportunity arises. In this respect, New Zealand is already in negotiations with four treaty partners that do not contain the required provision. In addition, New Zealand reported it will seek to include Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015) or both alternatives in all of its future tax treaties.

Peer input

181. Most peers that provided input reported that their treaty with New Zealand meets the requirement under element D.3.

182. For the 20 treaties identified that do not include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015), or both alternatives

in Articles 9(1) and 7(2), four of the relevant treaty partners provided peer input. Two of these peers indicated that its tax treaty with New Zealand does not meet the requirement under element D.3. The other two peers mentioned that their treaty with New Zealand includes the second sentence of Article 25(2), while such equivalent is not included or only include one of the alternatives.

Conclusion

	Areas for improvement	Recommendations
[D.3]	<p>20 out of 48 tax treaties contain neither a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015) nor both alternative provisions provided for in Article 9(1) and Article 7(2). Out of these number:</p> <ul style="list-style-type: none"> • 19 contain neither a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015) nor any of the alternative provisions. • One does not contain a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015) and only the alternative provision provided in Article 9(1). 	<p>New Zealand should as quickly as is possible ratify the Multilateral Instrument to incorporate the equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015) in those eight treaties that currently do not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force.</p> <p>For the remaining 12 treaties that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015) following its entry into force, New Zealand should, in accordance with its plan, request the inclusion of the required provision via bilateral negotiations or be willing to accept the inclusion of both alternative provisions for those treaties where no negotiations are pending.</p> <p>In addition, New Zealand should maintain its stated intention to include the required provision, or be willing to accept the inclusion of both alternatives provisions, in all future tax treaties.</p>

Notes

1. The website of New Zealand's Inland Revenue includes a specific webpage with information on the time limits for adjustments and refunds. Available at: www.ird.govt.nz/technical-tax/legislation/2013/2013-52/2013-52-refunds-ita/leg-2013-52-refund-ita.html (accessed on 18 July 2018).
2. If the taxpayer filed a fraudulent tax return, or if the return is wilfully misleading or omits income, then there is no time limit for amending a tax assessment.
3. Of these 28 treaties, one treaty also includes the alternative provision to Article 9(1), setting a time limit for making primary adjustments.

References

OECD (2015), *Model Tax Convention on Income and on Capital 2014 (Full Version)*, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264239081-en> (accessed on 18 July 2018).

Summary

	Areas for improvement	Recommendations
Part A. Preventing disputes		
[A.1]	<p>11 out of 48 tax treaties do not contain a provision that is equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention.</p>	<p>New Zealand should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention in those two treaties that currently do not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force.</p> <p>For the remaining nine treaties that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention following its entry into force, New Zealand should, in accordance with its plan, request the inclusion of the required provision via bilateral negotiations for those treaties where currently no negotiations are pending.</p> <p>In addition, New Zealand should maintain its stated intention to include the required provision in all future tax treaties.</p>
[A.2]	-	<p>New Zealand should continue to provide for roll-back of bilateral APAs in appropriate cases as it has done thus far.</p>
Part B. Availability and access to MAP		
[B.1]	<p>13 out of 48 tax treaties do not contain a provision that is equivalent to Article 25(1) of the OECD Model Tax Convention. Of those 13 tax treaties:</p> <ul style="list-style-type: none"> • Nine tax treaties do not contain the equivalent to Article 25(1), first sentence and the timeline to file such request is shorter than three years as from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty. • Two tax treaties do not contain the equivalent to Article 25(1), first sentence. • Two tax treaties provide that the timeline to file a MAP request is shorter than three years from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty. 	<p>New Zealand should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent to Article 25(1) of the OECD Model Tax Convention in those treaties that currently do not contain such equivalent. This concerns both:</p> <ul style="list-style-type: none"> • a provision that is equivalent to Article 25(1), first sentence of the OECD Model Tax Convention either: <ul style="list-style-type: none"> a. As amended in the final report of Action 14; or b. As it read prior to the adoption of final report of Action 14, thereby including the full sentence of such provision; and • a provision that allows taxpayers to submit a MAP request within a period of no less than three years as from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty. <p>For the remaining treaties that will not be modified by the Multilateral Instrument following its entry into force to include such equivalent, New Zealand should, in accordance with its plan, request the inclusion of the required provision via bilateral negotiations for those treaties where currently no negotiations are pending.</p> <p>In addition, New Zealand should maintain its stated intention to include the required provision in all future tax treaties.</p>

	Areas for improvement	Recommendations
	Where tax treaties do not contain a time limit for submission of a MAP request, applicable rules under domestic legislation bears the risk that taxpayers cannot validly present a MAP request within a period of at least three years as from the first notification of the action that results or will result in taxation not in accordance with the provisions of the tax treaty.	New Zealand should ensure that where its domestic time limits apply for filing of MAP requests, in the absence of a provision hereon in its tax treaties, such time limits do not prevent taxpayers from access to MAP if a request thereto is made within a period of three years as from the first notification of the action that results or will result in taxation not in accordance with the provisions of the tax treaty.
[B.2]	None of the 48 treaties currently contain a provision equivalent to Article 25(1) of the OECD Model Tax Convention as changed by the Action 14 final report, allowing taxpayers to submit a MAP request to the competent authority of either treaty partners. For these treaties no documented bilateral consultation or notification process is in place, which allows the other competent authority concerned to provide its views on the case when the taxpayer's objection raised in the MAP request is considered not to be justified.	New Zealand should introduce a documented notification and/or consultation procedure for cases in which its competent authority considered the objection raised in a MAP request not to be justified and when the tax treaty concerned does not include Article 25(1) of the OECD Model Tax Convention as amended by the final report of Action 14.
[B.3]	-	As New Zealand has thus far granted access to MAP in eligible transfer pricing cases, it should continue granting access for these cases.
[B.4]	New Zealand reported it will give access to MAP in cases concerning whether the conditions for the application of a treaty anti-abuse provision have been met or whether the application of a domestic law anti-abuse provision is in conflict with the provisions of a treaty. Its competent authority, however, did not receive any MAP request of this kind from taxpayers during the Review Period. New Zealand is therefore recommended to follow its policy and grant access to MAP when such cases surface.	
[B.5]	New Zealand reported it will give access to MAP in cases where the tax authority and the taxpayer have entered into an audit settlement. Its competent authority, however, did not receive any MAP requests of this kind from taxpayers during the Review Period. New Zealand is therefore recommended to follow its policy and grant access to MAP when such cases surface.	
[B.6]	-	As New Zealand has thus far not limited access to MAP in eligible cases when taxpayers have complied with New Zealand's information and documentation requirements for MAP requests, it should continue this practice.
[B.7]	23 out of 48 tax treaties do not contain a provision that is equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention.	New Zealand should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention in those 12 treaties that currently do not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force. For the remaining 11 treaties that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention following its entry into force, New Zealand should, in accordance with its plan, request the inclusion of the required provision via bilateral negotiations for those treaties where currently no negotiations are pending. In addition, New Zealand should maintain its stated intention to include the required provision in all future tax treaties.

	Areas for improvement	Recommendations
[B.8]	-	Although not required by the Action 14 Minimum Standard, in order to further improve the level of details included on the website, New Zealand could consider including information on: <ul style="list-style-type: none"> • whether MAP is available in cases of multilateral disputes • the possibility of suspension of tax collection during the course of a MAP.
[B.9]	-	As it has thus far made its guidance on MAP available and easily accessible and published its MAP profile, New Zealand should ensure that its future updates to its guidance on MAP continue to be publically available and easily accessible and that its MAP profile published on the shared public platform is updated if needed.
[B.10]	-	-
Part C. Resolution of MAP cases		
[C.1]	11 out of 48 tax treaties do not contain a provision that is equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention.	New Zealand should as quickly as is possible ratify the Multilateral Instrument to incorporate the equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention in those two treaties that currently do not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force. For the remaining nine treaties that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention following its entry into force, New Zealand should, in accordance with its plan, request the inclusion of the required provision via bilateral negotiations for those treaties where no negotiations are pending. In addition, New Zealand should maintain its stated intention to include the required provision in all future tax treaties.
[C.2]	New Zealand submitted comprehensive MAP statistics on time on the basis of the MAP Statistics Reporting Framework for the years 2016 and 2017. Based on the information provided by New Zealand's MAP partners, its post-2015 MAP statistics actually match those of its treaty partners as reported by the latter. New Zealand's MAP statistics show that during the Statistics Reporting Period it closed 63% (17 out of 27 cases) of its post-2015 cases in 7.33 months on average. In that regard, New Zealand is recommended to seek to resolve the remaining 37% of the post-2015 cases pending on 31 December 2017 (ten cases, all of which started in 2017) within a timeframe that results in an average timeframe of 24 months for all post-2015 cases.	
[C.3]	-	New Zealand should continue to monitor whether it has adequate resources in place to ensure that future MAP cases are resolved in a timely, efficient and effective manner.
[C.4]	-	As it has done thus far, New Zealand should continue to ensure that its competent authority has the authority, and uses that authority in practice, to resolve MAP cases without being dependent on approval or direction from the tax administration personnel directly involved in the adjustment at issue and absent any policy considerations that New Zealand would like to see reflected in future amendments to the treaty.
[C.5]	-	As it has done thus far, New Zealand should continue to use appropriate performance indicators.
[C.6]	-	-

	Areas for improvement	Recommendations
Part D. Implementation of MAP agreements		
[D.1]	As will be discussed under element D.3 not all of New Zealand's tax treaties contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention. Therefore, there is a risk that for those tax treaties that do not contain that provision, not all MAP agreements will be implemented in cases where the agreement requires a downward adjustment to be made, as this is subject to the discretion of the commissioner of the Inland Revenue.	Even though New Zealand has implemented all MAP agreements thus far, it should ensure that in the absence of the required provisions discussed under element D.3 implementation of MAP agreements is not obstructed by time limits in its domestic law.
[D.2]	-	As it has done thus far, New Zealand should continue to implement all MAP agreements on a timely basis if the conditions for such implementation are fulfilled.
[D.3]	<p>20 out of 48 tax treaties contain neither a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention nor both alternative provisions provided for in Article 9(1) and Article 7(2). Out of these number:</p> <ul style="list-style-type: none"> • 19 contain neither a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention nor any of the alternative provisions. • One does not contain a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention and only the alternative provision provided in Article 9(1). 	<p>New Zealand should as quickly as is possible ratify the Multilateral Instrument to incorporate the equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention in those eight treaties that currently do not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force.</p> <p>For the remaining 12 treaties that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention following its entry into force, New Zealand should, in accordance with its plan, request the inclusion of the required provision via bilateral negotiations or be willing to accept the inclusion of both alternative provisions for those treaties where no negotiations are pending.</p> <p>In addition, New Zealand should maintain its stated intention to include the required provision, or be willing to accept the inclusion of both alternatives provisions, in all future tax treaties.</p>

Annex A

Tax treaty network of New Zealand

Treaty partner	Action 25(1) of the OECD Model Tax Convention (“MTC”)		Article 25(2) of the OECD MTC				Article 25(3) of the OECD MTC		Arbitration										
	B.1	B.1	B.3	B.4	C.1	D.3	A.1	B.7		C.6									
	Column 3		Column 4		Column 5		Column 6		Column 7		Column 8		Column 9		Column 10		Column 11		
	Inclusion Art. 25(1)?		Inclusion Art. 25(1) second sentence?		Inclusion Art. 9(2)?		Existence of a provision that MAP Article will not be available in cases where your jurisdiction is of the assessment that there is an abuse of the DTC or of the domestic tax law?		Inclusion Art. 25(2) first sentence?		Inclusion Art. 25(2) second sentence?		Inclusion Art. 25(3) first sentence?		Inclusion Art. 25(3) second sentence?		Inclusion arbitration provision?		
	if yes, submission to either competent authority		if no, please state reasons		If no, will your CA provide access to MAP in TP cases?		If no, will your CA accept a taxpayer’s request for MAP in relation to such cases?		Y = yes N = no		Y = yes N = no		Y = yes N = no		Y = yes N = no		Y = yes if yes N = no if i- Art. 25(5) ii- mandatory other iii – voluntary		
Australia	Y	E = yes, CAs O = yes, only one CA N = No	Y = yes i = no, no such provision ii = no, different period iii = no, starting point for computing the 3 year period is different iv = no, other reasons	N/A	Y	Y = yes i = no, but access will be given to TP cases ii = no and access will not be given to TP cases	Y = yes i = no and such cases will be accepted for MAP ii = no but such cases will not be accepted for MAP	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	i
Austria	Y	O	Y	N/A	Y	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
Belgium	Y	O*	Y	N/A	Y	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	N*	N	N	N/A
British Virgin Islands	Y	N	iv	N/A	ii	ii	i	N	N	N	N	N	N	N	N	N	N	N	N/A

Treaty partner	Action 25(1) of the OECD Model Tax Convention (“MTC”)		Article 25(2) of the OECD MTC				Article 25(3) of the OECD MTC		Arbitration	
	B.1	B.1	B.3	B.4	C.1	D.3	A.1	B.7		
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11
			Inclusion Art. 25(1) second sentence? If no, please state reasons	Inclusion Art. 9(2)? If no, will your CA provide access to MAP in TP cases?	Existence of a provision that MAP Article will not be available in cases where your jurisdiction is of the assessment that there is an abuse of the DTC or of the domestic tax law? If no, will your CA accept a taxpayer’s request for MAP in relation to such cases?	Inclusion Art. 25(2) first sentence?	Inclusion Art. 25(2) second sentence? If no, alternative provision in Art. 7 & 9 OECD MTC?	Inclusion Art. 25(3) first sentence?	Inclusion Art. 25(3) second sentence?	Inclusion arbitration provision?
Canada	Y	O	Y	Y	i	Y	Y	Y	Y	N
Cayman Islands	Y	N	iv	i	i	N	N	N	N	N/A
Chile	Y	O	Y	Y	i	Y	N*	Y	N*	N/A
China (People’s Republic of)	Y	O	Y	Y	i	Y	Y	Y	Y	N/A
Cook Islands	Y	N	iv	i	i	N	N	N	N	N/A
Czech Republic	Y	O*	Y	Y	i	Y	Y	Y	N*	N/A
Denmark	Y	O*	Y	Y	i	Y	N*	Y	Y	N/A
Fiji	Y	N	i	i	i	N	N	N	N	N/A
Finland	Y	O*	Y	i**	i	Y	Y	Y	Y	N/A
France	Y	O*	Y	i**	i	Y	Y	N*	Y	N/A
Germany	Y	O	i	i**	i	Y	N*	Y	N*	N/A
Guernsey	Y	N	iv	i	i	N	N	N	N	N/A
Hong Kong (China)	Y	O*	Y	Y	i	Y	Y	Y	N*	N/A
India	Y	O	Y	Y	i	Y	Y	Y	Y	N/A
Indonesia	Y	O	ii*	i	i	Y	N*	Y	Y	N/A
Ireland	Y	O*	Y	Y	i	Y	N*	Y	Y	N/A
Isle of Man	Y	N	iv	i	i	N	N	N	N	N/A

Column 1	Action 25(1) of the OECD Model Tax Convention (“MTC”)		Article 25(2) of the OECD MTC				Article 25(3) of the OECD MTC		Arbitration									
	B.1	B.1	B.3	B.4	C.1	D.3	A.1	B.7		C.6								
Column 2	Column 3		Column 4		Column 5		Column 6		Column 7		Column 8		Column 9		Column 10		Column 11	
Treaty partner	Inclusion Art. 25(1)? If yes, submission to either competent authority	Inclusion Art. 25(1) second sentence? If no, please state reasons	Inclusion Art. 9(2)? If no, will your CA provide access to MAP in TP cases?	Existence of a provision that MAP Article will not be available in cases where your jurisdiction is of the assessment that there is an abuse of the DTC or of the domestic tax law? If no, will your CA accept a taxpayer’s request for MAP in relation to such cases?	Inclusion Art. 25(2) first sentence?	Inclusion Art. 25(2) second sentence? If no, alternative provision in Art. 7 & 9 OECD MTC?	Inclusion Art. 25(3) first sentence?	Inclusion Art. 25(3) second sentence?	Inclusion arbitration provision?									
Italy	N	ii*	i**	i	Y	Y	Y	Y	N	Y	Y	Y	Y	N*	N	N/A		
Japan	O*	Y	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	i
Jersey	N	iv	i	i	N	N	N	N	N	N	N	N	N	N	N	N/A		
Korea	O*	Y	i**	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N/A		
Malaysia	O*	i	i**	i	Y	N*	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A		
Marshall Islands	N	iv	i	i	N	N	N	N	N	N	N	N	N	N	N	N/A		
Mexico	O*	ii	i	i	N*	N	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A		
Netherlands	N*	ii	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A		
Norway	O	Y	i	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A		
Papua New Guinea	O	Y	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A		
Philippines	O	ii	Y	i	Y	ii	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A		
Poland	O	Y	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	N*	N	N/A		
Russia	O*	Y	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	N*	N	N/A		
Saint Kitts and Nevis	N	iv	i	i	N	N	N	N	N	N	N	N	N	N	N	N/A		
Samoa	O	Y	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A		
Singapore	O	Y	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	N*	N	N/A		

Column 1	Action 25(1) of the OECD Model Tax Convention (“MTC”)		Article 25(2) of the OECD MTC				Article 25(3) of the OECD MTC		Arbitration	
	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9		Column 10
	B.1	B.1	B.1	B.3	B.4	C.1	D.3	A.1	B.7	C.6
Treaty partner	Inclusion Art. 25(1)?	Inclusion Art. 25(1) second sentence?	Inclusion Art. 9(2)? If no, will your CA provide access to MAP in TP cases?	Existence of a provision that MAP Article will not be available in cases where your jurisdiction is of the assessment that there is an abuse of the DTC or of the domestic tax law? If no, will your CA accept a taxpayer’s request for MAP in relation to such cases?	Inclusion Art. 25(2) first sentence?	Inclusion Art. 25(2) second sentence? If no, alternative provision in Art. 7 & 9 OECD MTC?	Inclusion Art. 25(3) first sentence?	Inclusion Art. 25(3) second sentence?	Inclusion arbitration provision?	
South Africa	O	Y	N/A	i	Y	Y	Y	Y	N*	N
Spain	O	Y	N/A	i	Y	Y	Y	Y	Y	N
Sweden	O*	i	N/A	i**	N*	N*	N*	N*	N*	N
Switzerland	O	Y	N/A	i	Y	N	N	Y	Y	N
Chinese Taipei	O	Y	N/A	i	Y	Y	Y	Y	Y	N
Thailand	O	Y	N/A	i	Y	Y	Y	Y	N	N
Turkey	O*	ii	5-years	i	Y	Y	Y	Y	Y	N
United Arab Emirates	O	Y	N/A	i	Y	Y	Y	Y	N	N
United Kingdom	O*	i	N/A	i*	Y	N*	N*	Y	N*	N
United States	O	Y	N/A	i	Y	Y	Y	Y	Y	N
Viet Nam	O	Y	N/A	i	Y	Y	Y	Y	Y	N

Annex B

MAP statistics reporting for the 2016 and 2017 Reporting Periods (1 January 2016 to 31 December 2017) for pre-2016 cases

2016 MAP Statistics														
Category of cases	No. of pre-2016 cases in MAP inventory on 1 January 2016	Number of pre-2016 cases closed during the reporting period by outcome										No. of pre-2016 cases remaining in on MAP inventory on 31 December 2016	Average time taken (in months) for closing pre-2016 cases during the reporting period	
		Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12			Column 13
		Denied MAP access	Objection is not justified	Withdrawn by taxpayer	Unilateral relief granted	Resolved via domestic remedy	Agreement fully eliminating double taxation/ fully resolving taxation not in accordance with tax treaty	Agreement partially eliminating double taxation/partially resolving taxation not in accordance with tax treaty	Agreement that there is no taxation not in accordance with tax treaty	No agreement, including agreement to disagree	Any other outcome			
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13	Column 14	
Attribution/ Allocation	3	0	0	0	0	0	1	0	0	0	0	2	22.00	
Others	5	0	0	0	0	0	4	0	0	0	0	1	19.00	
Total	8	0	0	0	0	0	5	0	0	0	0	3	19.60	

2017 MAP Statistics														
Category of cases	No. of pre-2016 cases in MAP inventory on 1 January 2017	Number of pre-2016 cases closed during the reporting period by outcome										No. of pre-2016 cases remaining in on MAP inventory on 31 December 2017	Average time taken (in months) for closing pre-2016 cases during the reporting period	
		Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12			Column 13
		Denied MAP access	Objection is not justified	Withdrawn by taxpayer	Unilateral relief granted	Resolved via domestic remedy	Agreement fully eliminating double taxation/ fully resolving taxation not in accordance with tax treaty	Agreement partially eliminating double taxation/partially resolving taxation not in accordance with tax treaty	Agreement that there is no taxation not in accordance with tax treaty	No agreement, including agreement to disagree	Any other outcome			
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13	Column 14	
Attribution/ Allocation	2	0	0	0	0	0	2	0	0	0	0	0	22.19	
Others	1	0	0	0	0	0	1	0	0	0	0	0	27.90	
Total	3	0	0	0	0	0	3	0	0	0	0	0	24.09	

Annex C

MAP statistics reporting for the 2016 and 2017 Reporting Periods (1 January 2016 to 31 December 2017) for post-2015 cases

2016 MAP Statistics															
Category of cases	No. of post-2015 cases in MAP inventory on 1 January 2016	No. of post-2015 cases started during the reporting period	Number of post-2015 cases closed during the reporting period by outcome								No. of post-2015 cases remaining in on MAP inventory on 31 December 2016	Average time taken (in months) for closing post-2015 cases during the reporting period			
			Denied MAP access	Objection is not justified	Withdrawn by taxpayer	Unilateral relief granted	Resolved via domestic remedy	Agreement fully eliminating double taxation/ fully resolving taxation not in accordance with tax treaty	Agreement partially eliminating double taxation/partially resolving taxation not in accordance with tax treaty	Agreement that there is no taxation not in accordance with tax treaty			No agreement, including agreement to disagree	Any other outcome	
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13	Column 14	Column 15	
Attribution/ Allocation	0	3	0	0	0	0	0	0	0	0	0	0	0	3	n.a.
Others	0	10	0	0	0	0	0	1	0	0	0	0	0	9	6.70
Total	0	13	0	0	0	0	0	1	0	0	0	0	0	12	6.70

2017 MAP Statistics															
Category of cases	No. of post-2015 cases in MAP inventory on 1 January 2017	No. of post-2015 cases started during the reporting period	Number of post-2015 cases closed during the reporting period by outcome								No. of post-2015 cases remaining in on MAP inventory on 31 December 2017	Average time taken (in months) for closing post-2015 cases during the reporting period			
			Denied MAP access	Objection is not justified	Withdrawn by taxpayer	Unilateral relief granted	Resolved via domestic remedy	Agreement fully eliminating double taxation/ fully resolving taxation not in accordance with tax treaty	Agreement partially eliminating double taxation/partially resolving taxation not in accordance with tax treaty	Agreement that there is no taxation not in accordance with tax treaty			No agreement, including agreement to disagree	Any other outcome	
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13	Column 14	Column 15	
Attribution/ Allocation	3	6	0	0	0	1	0	3	0	0	0	0	0	5	8.74
Others	9	8	1	0	0	0	0	11	0	0	0	0	0	5	6.91
Total	12	14	1	0	0	1	0	14	0	0	0	0	0	10	7.37

Glossary

Action 14 Minimum Standard	The minimum standard as agreed upon in the final report on Action 14: Making Dispute Resolution Mechanisms More Effective
MAP Statistics Reporting Framework	Rules for reporting of MAP statistics as agreed by the FTA MAP Forum
Multilateral Instrument	Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting
OECD Model Tax Convention	OECD Model Tax Convention on Income and on Capital as it read on 21 November 2017
OECD Transfer Pricing Guidelines	OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations
Pre-2016 cases	MAP cases in a competent authority’s inventory pending resolution on 31 December 2015
Post-2015 cases	MAP cases received by a competent authority from the taxpayer on or after 1 January 2016
Review Period	Period for the peer review process that started on 1 January 2015 and ended on 31 December 2017
Statistics Reporting Period	Period for reporting MAP statistics that started on 1 January 2016 and ended on 31 December 2017
TAA	Tax Administration Act of 1994
Terms of Reference	Terms of reference to monitor and review the implementing of the BEPS Action 14 Minimum Standard to make dispute resolution mechanisms more effective

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OECD/G20 Base Erosion and Profit Shifting Project

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INCLUSIVE FRAMEWORK ON BEPS: ACTION 14

Under Action 14, countries have committed to implement a minimum standard to strengthen the effectiveness and efficiency of the mutual agreement procedure (MAP). The MAP is included in Article 25 of the OECD Model Tax Convention and commits countries to endeavour to resolve disputes related to the interpretation and application of tax treaties. The Action 14 Minimum Standard has been translated into specific terms of reference and a methodology for the peer review and monitoring process. The minimum standard is complemented by a set of best practices.

The peer review process is conducted in two stages. Stage 1 assesses countries against the terms of reference of the minimum standard according to an agreed schedule of review. Stage 2 focuses on monitoring the follow-up of any recommendations resulting from jurisdictions' stage 1 peer review report. This report reflects the outcome of the stage 1 peer review of the implementation of the Action 14 Minimum Standard by New Zealand, which is accompanied by a document addressing the implementation of best practices which can be accessed on the OECD website: <http://oe.cd/bepsaction14>.

Consult this publication on line at <https://doi.org/10.1787/9789264304369-en>.

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