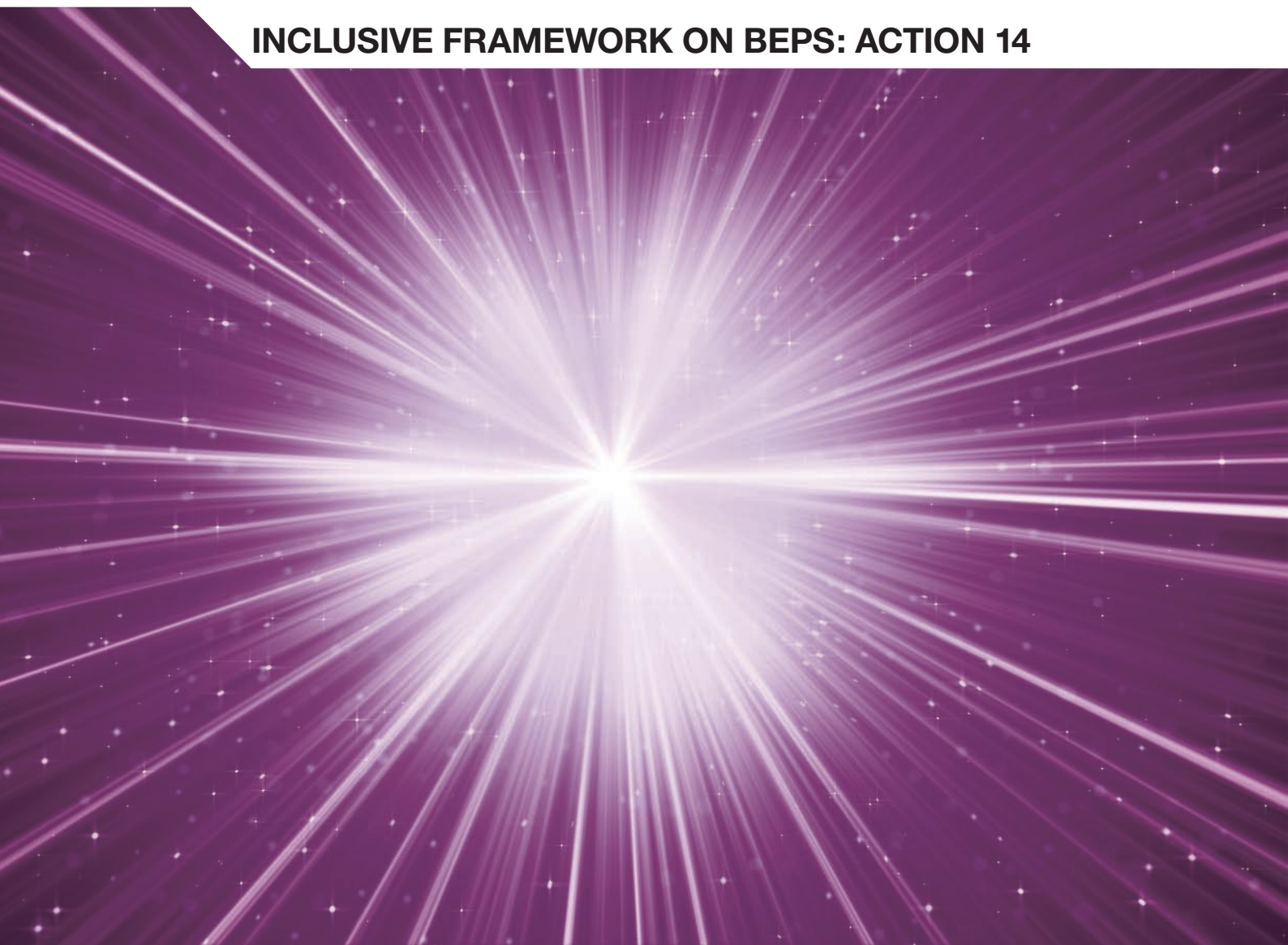


**OECD/G20 Base Erosion and Profit Shifting  
Project**



# **Making Dispute Resolution More Effective – MAP Peer Review Report, United Kingdom (Stage 2)**

**INCLUSIVE FRAMEWORK ON BEPS: ACTION 14**





OECD/G20 Base Erosion and Profit Shifting Project

**Making Dispute  
Resolution More Effective  
– MAP Peer Review  
Report, United Kingdom  
(Stage 2)**

INCLUSIVE FRAMEWORK ON BEPS: ACTION 14

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## **ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT**

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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 BEPS planning strategies that rely on outdated rules or on poorly co-ordinated domestic measures will be rendered ineffective.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 85 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 125 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 8 May 2019 and prepared for publication by the OECD Secretariat.

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*Abbreviations and acronyms*

<b>APA</b>	Advance Pricing Arrangement
<b>FTA</b>	Forum on Tax Administration
<b>HMRC</b>	Her Majesty’s Revenue and Customs
<b>MAP</b>	Mutual Agreement Procedure
<b>OECD</b>	Organisation for Economic Co-operation and Development
<b>TIOPA 2010</b>	Taxation of International and Other Provisions Act 2010



## Executive summary

The United Kingdom has a very large tax treaty network with over 125 tax treaties and has signed and ratified the EU Arbitration Convention. The United Kingdom has an established MAP programme and has long-standing and large experience in resolving MAP cases. It has a large MAP inventory with a very large number of new cases submitted each year and around 450 cases pending on 31 December 2017. Of these cases, 65% concern allocation/attribution cases. The outcome of the stage 1 peer review process was that overall the United Kingdom met most of the elements of the Action 14 Minimum Standard. Where it has deficiencies, the United Kingdom worked to address them, which has been monitored in stage 2 of the process. In this respect, the United Kingdom has solved almost all identified deficiencies.

Almost all of the United Kingdom's tax treaties include a provision relating to MAP, however, 15 treaties do not include such provision. Those treaties that include a MAP provision generally follow paragraphs 1 through 3 of Article 25 of the OECD Model Tax Convention (OECD, 2017). Its treaty network is partly consistent with the requirements of the Action 14 Minimum Standard, except mainly for the fact that:

- Approximately 60% of its tax treaties do not contain a provision requiring competent authorities to consult together for the elimination of double taxation in cases not provided for in the tax treaty (as required under Article 25(3), second sentence).
- Approximately 75% of its tax treaties do not include a provision stipulating that mutual agreements shall be implemented notwithstanding any time limits in domestic law (which is required under Article 25(2), second sentence), or include the alternative provisions for Article 9(1) and Article 7(2) to set a time limit for making transfer pricing adjustments.

In order to be fully compliant with all four key areas of an effective dispute resolution mechanism under the Action 14 Minimum Standard, the United Kingdom signed and ratified, without any reservations on the MAP article, the Multilateral Instrument. Furthermore, the United Kingdom opted for part VI of this instrument concerning the introduction of a mandatory and binding arbitration provision in tax treaties. Through this instrument a substantial number of its tax treaties have been or will be modified to fulfil the requirements under the Action 14 Minimum Standard. Where treaties have or will not be modified, upon entry into force of this Multilateral Instrument for the treaties concerned, the United Kingdom reported has put a plan in place for their renegotiation, whereby those treaties under which its competent authority has MAP cases are prioritised. In line with that plan, the United Kingdom it has initiated several negotiations, whereby in a number of cases this led to a new tax treaty or the amendment of an existing treaty, all of which are in line with the requirements under the Action 14 Minimum Standard. A further number of negotiations are envisaged or scheduled.

The United Kingdom 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.

The United Kingdom also meets the requirements regarding the availability and access to MAP under the Action 14 Minimum Standard. It provides access to MAP in all eligible cases, although for those tax treaties that do not contain a filing period for MAP requests, there is a risk that due to the United Kingdom's domestic time limits access to MAP is not available even if the taxpayer filed its MAP request within three years as from the first notification of the action resulting in taxation not in accordance with the tax treaty. Furthermore, it has in place a documented notification and consultation process for those situations in which the United Kingdom's competent authority considers the objection raised by taxpayers in a MAP request as not justified. The United Kingdom also has comprehensive guidance on the availability of MAP and on it applies this process in practice, both under tax treaties and the EU Arbitration Convention. In its stage 1 peer review it was identified that this guidance did not specify whether the United Kingdom will also grant access to MAP for cases where taxpayers and HMRC have entered into an audit settlement. In 2018 the United Kingdom published an update of its MAP guidance, in which several further clarifications were reflected regarding its policy and practice concerning the handling and resolution of MAP cases, including the information and documentation taxpayers need to include in their MAP request. This update also reflects that taxpayers have access to MAP in cases of audit settlements.

Concerning the average time needed to resolve MAP cases, the MAP statistics for the United Kingdom 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	183	174	105	252	25.31
Other cases	79	285	159	205	9.77
<b>Total</b>	262	459	264	457	15.95

\*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, the United Kingdom used as a start date the date when the MAP request was received and as the end date the competent authorities concerned reached a formal agreement. Where competent authorities require taxpayers to confirm their acceptance of the agreement reached, the end date is computed as the date the competent authorities have received this confirmation.

The number of cases the United Kingdom closed in 2016 or 2017 is around 60% of the number of all new cases started in those years. During these years, MAP cases were closed 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 needed was 15.95 months. This mainly concerns the resolution of other cases, which average is far below the pursued 24-month average (9.77 months). The average time to close attribution/allocation cases is thereby considerably longer (25.31 months) and slightly above this pursued average. Although the average time to close MAP cases is below 24 months, the MAP inventory of the United Kingdom as per 31 December 2017 substantially increased with 74% as compared to the inventory on 1 January 2016, which mainly results from an increase by 159% in the number of other MAP cases. In this respect, the United Kingdom has recently attributed more resources to the competent authority function. Nevertheless,

the substantial increase in the number of MAP cases indicates that even more resources may be needed to cope with this increase and to ensure that the United Kingdom continues to resolve MAP cases a timely, effective and efficient manner.

Furthermore, the United Kingdom meets all of the other requirements under the Action 14 Minimum Standard in relation to the resolution of Map cases. Its competent authority operates fully independently from the audit function of the tax authorities and uses 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, the United Kingdom also meets the Action 14 Minimum Standard as regards the implementation of MAP agreements. The United Kingdom monitors implementation and no issues have surfaced throughout the peer review process.

### *Reference*

OECD (2017), *Model Tax Convention on Income and on Capital 2017 (Full Version)*, OECD Publishing, Paris, <https://doi.org/10.1787/g2g972ee-en>.



## *Introduction*

### **Available mechanisms in the United Kingdom to resolve tax treaty-related disputes**

The United Kingdom has entered into 130 tax treaties on income (and/or capital), of which 128 are in force.<sup>1</sup> These 130 treaties apply to 133 jurisdictions.<sup>2</sup> All but 15 of these 130 treaties provide for a mutual agreement procedure for resolving disputes on the interpretation and application of the provisions of the tax treaty.<sup>3</sup> In addition, 28 of the 130 treaties provide for an arbitration procedure as a final stage to the mutual agreement procedure.<sup>4</sup>

The United Kingdom is also a signatory to the EU Arbitration Convention, which provides for a mutual agreement procedure supplemented with an arbitration procedure for settling transfer pricing disputes and disputes on the attribution of profits to permanent establishments between EU Member States.<sup>5</sup> Furthermore, the United Kingdom adopted Council Directive (EU) 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the European Union, which needs to be implemented in its domestic legislation as per 1 July 2019.<sup>6</sup>

The legal framework for the mutual agreement procedure in the United Kingdom is governed by sections 124-125 of the Taxation of International and Other Provisions Act 2010 (“**TIOPA 2010**”).<sup>7</sup> Specifically with respect to the EU Arbitration Convention, the legislative framework is governed by sections 126-128 of the TIOPA 2010. Under the tax treaties the United Kingdom has entered into, the competent authority function to handle MAP cases is delegated to the Commissioners for Her Majesty’s Revenue and Customs (“**HMRC**”) or their authorised representatives. In practice, the following teams within HMRC handle MAP cases:

- Transfer pricing and profit attribution to permanent establishments: CS&TD, Business, Assets and International: TP Team<sup>8</sup>
- Other CT issues (including corporate residence and withholding tax): CS&TD, Business, Assets and International: Tax Treaty Team
- Personal Tax issues: CS&TD, Business Assets and International: specialist personal tax.

Within HMRC approximately 30 persons work in Business, Assets and International TP team and handle attribution/allocation MAP cases, whereby three persons provide support functions. The Business, Assets and International Tax Treaty Team consists of twelve persons, whereby five persons are responsible for handling MAP cases relating to corporate residence and other company cases. In addition, four members of the wider team handle MAP cases relating to personal taxes.



The United Kingdom issued guidance on the governance and administration of the mutual agreement procedure in Statement of Practice 1/2018 (“**MAP guidance**”), which is available at:

<https://www.gov.uk/government/publications/statement-of-practice-1-2018/statement-of-practice-1-2018>

Furthermore, its International Manual on transfer pricing and mutual agreement procedures also contains information on the MAP process in the United Kingdom. This manual is available at:

[www.gov.uk/hmrc-internal-manuals/international-manual/intm423000](http://www.gov.uk/hmrc-internal-manuals/international-manual/intm423000)

## Developments in the United Kingdom since 1 January 2017

### *Developments relating to the tax treaty network*

In the stage 1 peer review report of the United Kingdom it is reflected that in November 2016 it signed new treaties with Colombia and Lesotho. The treaty with Colombia is a newly negotiated treaty, while the treaty with Lesotho will replace the existing treaty upon entry into force. Since then the United Kingdom has ratified both treaties, but the relevant treaty partners have not yet.

Furthermore, on 7 June 2017 the United Kingdom signed 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. It further opted for part VI of that instrument, which contains a mandatory and binding arbitration procedure as a final stage to the MAP process. On 29 June 2018 it deposited the instrument of its ratification, following which the Multilateral Instrument has for the United Kingdom entered into force on 1 October 2018. With the depositing of its instrument of ratification, the United Kingdom also submitted its list of notifications and reservations to the Multilateral Instrument.<sup>9</sup> In relation to the Action 14 Minimum Standard, the United Kingdom has not made any reservations to Article 16 of the Multilateral Instrument (concerning the mutual agreement procedure).

In addition, the United Kingdom reported that since 1 January 2017 it has concluded several treaty negotiations, *inter alia* with a view to ensure compliance with the Action 14 Minimum Standard. This has resulted in newly signed treaties with Belarus (2017), Cyprus<sup>10</sup> (2018), Guernsey (2018), Isle of Man (2018), Jersey (2018) and Kyrgyzstan (2017). The United Kingdom has amended protocols to existing treaties with Switzerland (2017), the Ukraine (2017) and Uzbekistan (2018). Of these treaties, the ones with Belarus, Cyprus<sup>11</sup>, Guernsey, Isle of Man, Jersey and the United Arab Emirates have entered into force. The newly signed treaties with Guernsey, Isle of Man and Jersey have replaced the existing tax treaties with these states. Also the newly signed treaty with Cyprus<sup>12</sup> concerns the replacement of an existing treaty and which has entered into force on 18 July 2018. The treaty with Belarus also concerns an entire new treaty that entered into force on 27 July 2018. Consequently, the United Kingdom will no longer continue to apply the treaty with the former USSR with respect to Belarus nor with any other state. Finally, the treaty with Kyrgyzstan concerns a new tax treaty with a treaty partner with which there is no treaty currently in force. Taking these developments into consideration, the number of tax treaties of the United Kingdom is 130 treaties instead of 129 treaties that was taken as the basis in the stage 1 peer review report.

For those tax treaties that were in stage 1 of the peer review report considered not to be in line with one or more elements of the Action 14 Minimum Standard, the United Kingdom reported that it is already negotiating with a number of treaty partners on either a replacement of an existing tax treaty or amending protocols to existing treaties to be compliant with this standard (Austria, Germany, Malawi and Thailand). Furthermore, the United Kingdom identified 52 treaty partners that are not a signatory to the Multilateral Instrument and for which bilateral negotiations are necessary to bring the relevant treaties in line with the Action 14 Minimum Standard. Of these 52 treaty partners, the United Kingdom has MAP cases pending with six jurisdictions. It therefore decided to prioritise negotiations with these treaty partners and include them in the negotiation programme for the coming fiscal years, which has been approved as of late 2018. In addition, the United Kingdom also identified another 15 treaty partners that are part of the BEPS Inclusive Framework and not a signatory to the Multilateral Instrument, for which bilateral negotiations are also necessary and which will be included in the list of treaties for which renegotiations will be requested. For the remaining 31 treaty partners, the United Kingdom reported that it will also request the renegotiations of these treaties when the envisaged negotiations with the first group of 21 treaty partners have been finalised.

### *Other developments*

On 20 February 2018 the United Kingdom issued new MAP guidance in Statement of Practice 1/2018 and which has replaced Statement of Practice 1/2011. On 31 January 2018 it also updated its International Manual on transfer pricing and the mutual agreement procedure. The updates to these documents reflect that access to MAP is available in: transfer pricing cases, cases where an anti-abuse provision applies, audit settlements have been entered into, bona fide taxpayer-initiated foreign adjustments and for multilateral MAPs. Furthermore, the following subjects are also reflected, or updated: (i) the availability of MAP in relation to protective requests, (ii) the notification/consultation process to be applied where a MAP request is considered to be invalid, (iii) the process for implementing MAP agreements, (iv) the availability of suspension of tax collection for cases being dealt with in MAP and (v) the consideration of interest and penalties in MAP.

Further to the above, the United Kingdom reported that in 2017 it introduced an internal process document that contains guidance for staff in charge of MAP cases on the administrative steps to be followed from when a MAP request is being received up to the implementation of MAP agreements, including how to act when the objection raised in a MAP request is considered not to be justified. In addition, the United Kingdom mentioned that HMRC is in the process of rolling out the Global Awareness Training Module to relevant compliance staff to raise awareness among them on the interaction between compliance activities and the mutual agreement procedure.

## **Basis for the peer review process**

### *Outline of the peer review process*

The peer review process entails an evaluation of the United Kingdom'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 United Kingdom, its peers and taxpayers.

The process consists of two stages: a peer review process (stage 1) and a peer monitoring process (stage 2). In stage 1, the United Kingdom's implementation of the Action 14 Minimum Standard as outlined above is evaluated, which has been reflected in a peer review report that has been adopted by the BEPS Inclusive Framework on 5 September 2017. This report identifies the strengths and shortcomings of the United Kingdom in relation to the implementation of this standard and provides for recommendations on how these shortcomings should be addressed. The stage 1 report is published on the website of the OECD.<sup>13</sup> Stage 2 is launched within one year upon the adoption of the peer review report by the BEPS Inclusive Framework through an update report by the United Kingdom. In this update report, the United Kingdom reflected (i) what steps it has already taken, or are to be taken, to address any of the shortcomings identified in the peer review report and (ii) any plans or changes to its legislative and/or administrative framework concerning the implementation of the Action 14 Minimum Standard. This update report forms the basis for the completion of the peer review process in respect of the United Kingdom.

### ***Outline of the treaty analysis***

For the purpose of this report and the statistics below, in assessing whether the United Kingdom 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 replacement of an existing treaty. Furthermore, the treaty analysis also takes into account the treaty with former Yugoslavia and former Czechoslovakia, which the United Kingdom continues to apply to Bosnia and Herzegovina, Montenegro and Serbia, respectively the Czech Republic and the Slovak Republic. As it concerns two tax treaties that are applicable to multiple jurisdictions, each of these treaties are only counted as one for this purpose. Reference is made to Annex A for the overview of the United Kingdom's tax treaties regarding the mutual agreement procedure.

### ***Timing of the process and input received by peers and taxpayers***

Stage 1 of the peer review process was for the United Kingdom launched on 5 December 2016, with the sending of questionnaires to the United Kingdom and its peers. The FTA MAP Forum has approved the stage 1 peer review report of the United Kingdom in May 2017, with the subsequent approval by the BEPS Inclusive Framework on 5 September 2017. On 5 September 2018, the United Kingdom submitted its update report, which initiated stage 2 of the process.

While the commitment to the Action 14 Minimum Standard only starts from 1 January 2016, the United Kingdom opted to provide information on period starting as from 1 January 2015 and also requested peer input relating to that period. The period for evaluating the United Kingdom's implementation of this standard ranges from 1 January 2016 up to 31 December 2016 and formed the basis for the stage 1 peer review report. The period of review for stage 2 started on 1 January 2017 and depicts all developments as from that date until 31 August 2018. Next to its assessment on the compliance with the Action 14 Minimum Standard, the United Kingdom also addressed best practices<sup>14</sup> and asked for peer input on best practices.

In total 22 peers provided input during stage 1: Australia, Belgium, Canada, People’s Republic of China, Denmark, France, Germany, India, Ireland, Italy, Japan, Lithuania, the Netherlands, New Zealand, Norway, Portugal, Singapore, South Africa, Spain, Sweden, Switzerland and the United States. In stage 1, these peers represent approximately 55% of post-2015 MAP cases in the United Kingdom’s inventory that started in 2016. During stage 2, apart from Greece, the same peers provided input on the update report of the United Kingdom. Furthermore, Slovenia also provided input during stage 2. For this stage, these peers represent approximately 79% of post-2015 MAP cases in the United Kingdom’s inventory that started in 2016 or 2017.<sup>15</sup> Input was also received from taxpayers during stage 1. Broadly all peers indicated having good working relationships with the United Kingdom with regard to MAP, some of them emphasising the efficiency of the United Kingdom’s competent authority. Specifically with respect to stage 2, nearly all peers that provided input reported that the update report of the United Kingdom fully reflects the experiences these peers have had with the United Kingdom since 1 January 2017 and/or that there was no addition to previous input given. Eleven peers, however, reflected additional input or new experiences, which are reflected throughout this document under the elements where they have relevance.

### *Input by the United Kingdom and cooperation throughout the process*

During stage 1, the United Kingdom provided extensive answers in its questionnaire, which was submitted on time. The United Kingdom was also 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, the United Kingdom provided the following information:

- MAP profile<sup>16</sup>
- MAP statistics<sup>17</sup> according to the MAP Statistics Reporting Framework<sup>18</sup> (see below).

Concerning stage 2 of the process, the United Kingdom submitted its update report on time and the information included therein was extensive. The United Kingdom was very co-operative during stage 2 and the finalisation of the peer review process.

Finally, the United Kingdom is an active member of the FTA MAP Forum and has shown good co-operation during the peer review process. The United Kingdom provided detailed peer input and made constructive suggestions on how to improve the process with the concerned assessed jurisdictions. The United Kingdom also provided peer input on the best practices<sup>19</sup> for a number of jurisdictions that asked for it.

## **Overview of MAP caseload in the United Kingdom**

The analysis of the United Kingdom’s MAP caseload for stage 1 relates to the period starting on 1 January 2016 and ending on 31 December 2016. For stage 2 the period ranges from 1 January 2017 to 31 December 2017. Both periods are taken into account in this report for analysing the MAP statistics of the United Kingdom. The analysis of the United Kingdom’s MAP caseload relates to the period starting on 1 January 2016 and ending 31 December 2017 (the “**Statistics Reporting Period**”). According to the statistics provided by the United Kingdom, 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	183	174	105	252
Other cases	79	285	159	205
<b>Total</b>	262	459	264	457

## General outline of the peer review report

This report includes an evaluation of the United Kingdom’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**”).<sup>20</sup> Apart from analysing the United Kingdom’s legal framework and its administrative practice, the report also incorporates peer input and responses to such input by the United Kingdom, both during stage 1 and stage 2. Furthermore, the report depicts the changes adopted and plans shared by the United Kingdom 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 basis of this report is the outcome of the stage 1 peer review process, which has identified in each element areas for improvement (if any) and provides for recommendations how the specific area for improvement should be addressed. Following the outcome of the peer monitoring process of stage 2, each of the elements have been updated with a recent development section to reflect any actions taken or changes made on how recommendations have been addressed, or to reflect other changes in the legal and administrative framework of the United Kingdom relating to the implementation of the Action 14 Minimum Standard. Where it concerns changes to MAP guidance or statistics, these changes are reflected in the analysis sections of the elements, which include a general description of the changes in the recent development sections.

The objective of Action 14 Minimum Standard is to make dispute resolution mechanisms more effective and concerns a continuous effort. Where recommendations have been fully implemented, this has been reflected and the conclusion section of the relevant element has been modified accordingly, but the United Kingdom should continue to act in accordance with a given element of the Action 14 Minimum Standard, even if there is no area for improvement and recommendation for this specific element.

## Notes

1. The tax treaties the United Kingdom has entered into are available at: [www.gov.uk/government/collections/tax-treaties#a-b-c](http://www.gov.uk/government/collections/tax-treaties#a-b-c). The tax treaties that are signed but not have yet entered into force are with Colombia (2016) and Lesotho (2016), New treaties have also been signed Guernsey (2018), Isle of Man (2018) and Jersey (2018). The newly signed treaties with Guernsey, Isle of Man, Jersey and Lesotho will replace the existing treaties once they enter into force. The United Kingdom has already completed ratification procedures concerning the treaties with Colombia and Lesotho. Furthermore, amending protocols to existing treaties with Switzerland (2017), the Ukraine (2017) and Uzbekistan (2018) have been signed, but also have not yet entered into force. Annex A includes an overview of the United Kingdom’s tax treaties with respect to the mutual agreement procedure. For purpose of this report and Annex, the newly negotiated treaties that replace an existing treaties, as well as the amending protocols to existing treaties are taken into account.
2. The United Kingdom continues to apply the 1981 treaty with former Yugoslavia to Bosnia and Herzegovina, Montenegro and Serbia, and the 1991 treaty with former Czechoslovakia to the Czech Republic and the Slovak Republic.
3. This concerns treaties with Antigua, Belize, Brunei, Greece, Grenada, Israel, Jamaica, Kiribati, Malawi, Myanmar, Namibia, Sierra Leone, the Solomon Islands, Saint. Kitts and Nevis and Tuvalu.
4. This concerns treaties with Albania, Algeria, Armenia, Bahrain, Belarus, Belgium, Canada, Cyprus, France, Germany, Guernsey, Iceland, Isle of Man, Japan, Jersey, Kosovo, Liechtenstein, Mexico, the Netherlands, Norway, Qatar, Spain, Sweden, Switzerland, Tajikistan, Ukraine, Uruguay and Uzbekistan. See for a discussion element C.6 of this report. Reference is made to Annex A for the overview of the United Kingdom’s tax treaties that include an arbitration clause.
5. Convention on the elimination of double taxation in connection with the adjustment of profits of associated enterprises (90/436/EEC) of 23 July 1990.
6. Available at: <https://eur-lex.europa.eu/eli/dir/2017/1852/oj>.
7. Available at: [www.legislation.gov.uk/ukpga/2010/8/part/2/chapter/3/data.pdf](http://www.legislation.gov.uk/ukpga/2010/8/part/2/chapter/3/data.pdf).
8. CS & TD stands for Customer Strategy and Tax Design.
9. Available at: [www.oecd.org/tax/treaties/beps-mli-position-united-kingdom-instrument-deposit.pdf](http://www.oecd.org/tax/treaties/beps-mli-position-united-kingdom-instrument-deposit.pdf).
10. Footnote by Turkey: The information in this document with reference to “Cyprus” relates to the southern part of the Island. There is no single authority representing both Turkish and Greek Cypriot people on the Island. Turkey recognises the Turkish Republic of Northern Cyprus (TRNC). Until a lasting and equitable solution is found within the context of United Nations, Turkey shall preserve its position concerning the “Cyprus” issue.  
  
Footnote by all the European Union Member States of the OECD and the European Union: The Republic of Cyprus is recognised by all members of the United Nations with the exception of Turkey. The information in this document relates to the area under the effective control of the Government of the Republic of Cyprus.
11. Ibid.
12. Ibid.
13. Available at: [www.oecd.org/tax/beps/making-dispute-resolution-more-effective-map-peer-review-report-united-kingdom-stage-1-9789264282674-en.htm](http://www.oecd.org/tax/beps/making-dispute-resolution-more-effective-map-peer-review-report-united-kingdom-stage-1-9789264282674-en.htm).

14. This report is accompanied by a document addressing the implementation of best practices which can be accessed on the OECD website: <http://oe.cd/bepsaction14>.
15. The breakdown of treaty partners on a jurisdiction-by-jurisdiction basis is only available for post-2015 cases under the MAP Statistics Reporting Framework.
16. Available at: [www.oecd.org/tax/dispute/United-Kingdom-Dispute-Resolution-Profile.pdf](http://www.oecd.org/tax/dispute/United-Kingdom-Dispute-Resolution-Profile.pdf).
17. The 2016 and 2017 MAP statistics of the United Kingdom are included in Annex B and C of this report.
18. MAP Statistics Reporting Framework, in *Peer Review Documents* (OECD, 2016).
19. This report is accompanied by a document addressing the implementation of best practices which can be accessed on the OECD website: <http://oe.cd/bepsaction14>.
20. Terms of reference to monitor and review the implementing of the BEPS Action 14 Minimum Standard to make dispute resolution mechanisms more effective in *Peer Review Documents* (OECD, 2016).

## *References*

OECD (2016), *BEPS Action 14 on More Effective Dispute Resolution Mechanisms*, Peer Review Documents, OECD, Paris, [oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf](http://oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf) (accessed on 22 August 2017).

## *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, 2017a) 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 the United Kingdom's tax treaties*

2. Out of the United Kingdom's 130 tax treaties, 115 contain a provision equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention 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.<sup>1</sup> The remaining 15 treaties that do not include such provision concern the treaties mentioned in the Introduction that do not provide for any MAP article at all.

3. The United Kingdom reported that where a tax treaty does not contain the full equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention, there are under its domestic legislation and/or administrative practice no constraints to endeavour to reach an agreement on the general interpretation of a tax treaty. In fact, all of the 15 tax treaties mentioned above that do not contain such equivalent, contain a provision that permits the competent authorities to exchange such information as is necessary for carrying out the provisions of the treaty. The United Kingdom considers an exchange for purposes of attempting to reach an agreement on both the application and interpretation as being necessary for carrying out the provisions of the tax treaty, and also that such provision is an appropriate legal means to do so.

4. Several peers reported that the provisions of their tax treaty with the United Kingdom do not meet all the requirements of the relevant elements of the Action 14 Minimum Standard and that they envisage implementing these elements by signing the Multilateral Instrument.



## ***Recent developments***

### *Bilateral modifications*

5. The United Kingdom signed new treaties with six treaty partners, four of which concern the replacement of an existing tax treaty and one concerns a treaty partner for which the United Kingdom previously continued to apply the treaty with the former USSR. The sixth treaty is a newly negotiated treaty with a treaty partner with which there was no treaty yet in place. All six treaties contain a provision that is equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention, which also was the case for five treaties for which currently a treaty is in force or continues to be applied by the United Kingdom. Of these six treaties, two have already entered into force and for the remaining four ratification procedures have not been completed by either treaty partner. Furthermore, the United Kingdom also signed three amending protocols to existing treaties, which, however, do not have relevance with respect to element A.1. The effects of these newly signed treaties and amending protocols have been reflected in the analysis above where they have relevance.

### *Multilateral Instrument*

6. The United Kingdom signed the Multilateral Instrument and has deposited its instrument of ratification on 29 June 2018. The Multilateral Instrument has entered into force for the United Kingdom on 1 October 2018.

7. 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 – 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. 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.

8. In regard of the 15 tax treaties identified above that are considered not to contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention, the United Kingdom listed all as a covered tax agreement under the Multilateral Instrument and made, pursuant to Article 16(6)(d)(i), for all of them a notification that they do not contain a provision described in Article 16(4)(c)(i). Of the relevant 15 treaty partners, 11 are not a signatory to the Multilateral Instrument and one did not list its tax treaty with the United Kingdom under that instrument. The remaining three treaty partners listed their treaty with the United Kingdom as a covered tax agreement and also made a notification on the basis of Article 16(6)(d)(i).

9. Of the three treaty partners mentioned above, none has deposited its instrument of ratification. Therefore, at this stage, the Multilateral Instrument will, upon entry into force for these three treaties, modify them to include the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention.

### *Other developments*

10. As is described in the Introduction, for those treaties that are not in line with one or more elements of the Action 14 Minimum Standard and will not be modified by the Multilateral Instrument, the United Kingdom has put in place a plan for bringing these treaties in line with that standard. Concerning the 12 treaties that are not in line with element A.1 and will not be modified by the Multilateral Instrument, three are included in the batch of 15 treaties for which the United Kingdom will request the relevant treaty partner to negotiate an update to the treaty.

### *Peer input*

11. Of the peers that provided input during stage 2, seven provided input in relation to their tax treaty with the United Kingdom. None of this input, however, relates to element A.1 as the treaties to which these peers are a signatory are in line with this element. The peers for which the treaty with the United Kingdom is considered not to be in line with the requirements under element A.1 did not provide input.

### *Anticipated modifications*

12. For the remaining nine treaties that are not in line with element A.1 and will not be modified by the Multilateral Instrument and for which no bilateral negotiations are envisaged, scheduled or pending, the United Kingdom reported that it will approach the treaty partners to bring these treaties in line with element D.3 when the prioritised negotiations as described above have been finalised. Apart from that, the United Kingdom reported it will seek to include Article 25(3), first sentence, of the OECD Model Tax Convention in all of its future tax treaties.

### **Conclusion**

	<b>Areas for improvement</b>	<b>Recommendations</b>
[A.1]	<p>15 out of 130 tax treaties do not contain a provision that is equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention. Of these 15 treaties:</p> <ul style="list-style-type: none"> <li>• Three are expected to be modified by the Multilateral Instrument to contain the required provision</li> <li>• 12 will not be modified by that instrument to contain the required provision. With respect to these 12 treaties: <ul style="list-style-type: none"> <li>- Three are included in the list of treaties for which negotiations are envisaged, scheduled or pending</li> <li>- For the remaining nine no actions have been taken or are planned to be taken, but are included in the plan for renegotiations.</li> </ul> </li> </ul>	<p>For the 12 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, the United Kingdom should:</p> <ul style="list-style-type: none"> <li>• Follow-up on its plan to initiate bilateral negotiations or continue such negotiations if they are pending for three treaty partners to include the required provision.</li> <li>• Also request the inclusion of the required provision in the remaining nine treaties in accordance with its plan for renegotiations.</li> </ul>

## [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.

13. 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.<sup>2</sup> 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.

### *The United Kingdom’s APA programme*

14. The United Kingdom reported that it has run an APA programme since 1999, under which it is under its domestic legislation authorised to enter into unilateral, bilateral and multilateral APAs. The legislation enabling the United Kingdom to enter into APAs is to be found in Sections 218-230 of TIOPA 2010. It further issued guidance on APAs in its Statement of Practice 2/2010, which was lastly updated in November 2016.<sup>3</sup> This guidance sets out in detail what an APA is, when and by whom they can be requested, how the process for obtaining an APA in the United Kingdom functions and what information is to be included in a request for an APA.

15. The United Kingdom further reported it does not require a specific timeline for filing of APA requests. In paragraph 25 of its APA guidance it is stipulated that the United Kingdom applies APAs as from the date of entry into force as specified in the APA agreement and for a specific period of time. Typically, the term of application is three to five years. As the situation may occur that an APA agreement is only reached after the fiscal years for which the APA is requested have ended, domestic legislation of the United Kingdom – specifically section 224 TIOPA – allows the APA to be effective for those fiscal years as well.<sup>4</sup> For example, if an APA request is submitted for fiscal years 2016-20 and is entered into in 2018, the United Kingdom applies the APA for all five years requested.

### *Roll-back of bilateral APAs*

16. In paragraph 28 of its APA guidance it is stipulated that the agreed transfer pricing methodology in an APA may be relevant for earlier fiscal years than those covered by the APA. The United Kingdom reported it allows for the roll-back of an APA to such earlier fiscal years if the particular facts and circumstances surrounding those years are substantially the same and if for those fiscal years the United Kingdom’s legal framework allows taxpayers to amend their self-assessment. This latter implies that those fiscal years have not been finalised yet. If, however, tax assessments have been finalised for those fiscal years, roll-back is only possible if under United Kingdom’s domestic legislation time limits still permit an amendment or a MAP request to be made. In practice, the United Kingdom would for finalised fiscal years require that taxpayers file a MAP request.

***Recent developments***

17. There are no recent developments with respect to element A.2.

***Practical application of roll-back of bilateral APAs******Period 1 January 2015-31 December 2016 (stage 1)***

18. The United Kingdom reported that statistics on APAs are published on the website of its government and on the website of the EU JTPF.<sup>5</sup> These statistics reflect the number of APA requests submitted, accepted or rejected, as well as the average completion time. These statistics relate to all APAs, not specifically related to bilateral APAs or APAs with a roll-back. In this respect, the United Kingdom reported that it does not have in place a mechanism that monitors: (i) the number of APA requests that concern the roll-back of an existing APA and (ii) for which of such requests a roll-back was granted. In that regard there is no data available on the number of cases for which taxpayers requested for the roll-back of an APA and in how many cases such roll-back was granted.

19. Peers generally reported that they do negotiate and agree bilateral APAs with the United Kingdom. Not all peers, however, have experience with roll-back of such bilateral APAs for the years under review or in general. In total seven peers reported they have experiences with the United Kingdom regarding roll-back of bilateral APAs. Their experience was that roll-back of bilateral APAs is possible in appropriate cases and that the United Kingdom is willing to enter into discussions hereon. These peers further reported positive working experiences with the United Kingdom in the process of effectively providing for roll-back of APAs. In addition, taxpayers also provided input entailing that the United Kingdom is willing to apply an APA not only to audited fiscal years, but also to all open fiscal years with the possibility of a roll-back.

20. Peers further reported that in the period 1 January 2015-31 December 2016 taxpayers have in approximately 10-15 cases requested for roll-back of their bilateral APAs to which the United Kingdom is a signatory party. As regards those requests, in four cases a roll-back was agreed by the competent authorities and in four cases the request is still pending. For the other reported requests no information is available on whether such roll-back was granted or will be granted.

***Period 1 January 2017-31 August 2018 (stage 2)***

21. As is mentioned in paragraph 18 above, the United Kingdom does not keep track on the number of APAs where a roll-back was requested and the number of cases where such roll-back was granted. This also applies to the period starting on 1 January 2017.

22. All peers that provided input during stage 1 stated in stage 2 that the update report provided by the United Kingdom fully reflects their experience with the United Kingdom since 1 January 2017 and/or there are no additions to the previous input given. Furthermore, three peers specifically provided input relating to element A.2. One of these peers mentioned that they did not receive a request for a roll-back of a bilateral APA since 1 January 2017 concerning the United Kingdom. The other two peers mentioned they received such requests since that date, one of them mentioning that in its experience the United Kingdom is willing to consider roll-backs of bilateral APAs. The other peer specified that it has identified two roll-back requests since 1 January 2017, which both have been granted.

*Anticipated modifications*

23. The United Kingdom did not indicate that it anticipates any modifications in relation to element A.2.

*Conclusion*

	Areas for improvement	Recommendations
[A.2]	-	-

**Notes**

1. These 115 treaties include the treaty with former Czechoslovakia that the United Kingdom continues to apply to the Czech Republic and the Slovak Republic and the treaty with former Yugoslavia that the United Kingdom continues to apply to Bosnia and Herzegovina, Montenegro and Serbia.
2. This description of an APA is based on the definition of an APA in the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations (OECD, 2017b).
3. Available at: [www.gov.uk/government/publications/statement-of-practice-2-2010/statement-of-practice-2-2010#the-formal-apa-application](http://www.gov.uk/government/publications/statement-of-practice-2-2010/statement-of-practice-2-2010#the-formal-apa-application). This guidance has been reproduced in Guidance INTM422000, which is available at: [www.gov.uk/hmrc-internal-manuals/international-manual/intm422000](http://www.gov.uk/hmrc-internal-manuals/international-manual/intm422000).
4. See also paragraph 26 of the United Kingdom’s APA guidance.
5. Available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/729876/Transfer\\_Pricing\\_and\\_Diverted\\_Profits\\_Tax\\_statistics.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/729876/Transfer_Pricing_and_Diverted_Profits_Tax_statistics.pdf). The most recent available statistics are up to and include fiscal year 2018 (ending on 30 April 2018). Available at: [http://ec.europa.eu/taxation\\_customs/business/company-tax/transfer-pricing-eu-context/joint-transfer-pricing-forum\\_en](http://ec.europa.eu/taxation_customs/business/company-tax/transfer-pricing-eu-context/joint-transfer-pricing-forum_en). The statistics made available on the website of the EU Joint Transfer Pricing forum are up to and include fiscal year 2017.

*References*

- OECD (2017a), *Model Tax Convention on Income and on Capital 2017 (Full Version)*, OECD Publishing, Paris, <https://doi.org/10.1787/g2g972ee-en>.
- OECD (2017b), *OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations 2017*, OECD Publishing, Paris, <https://dx.doi.org/10.1787/tpg-2017-en>.

## *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.

24. 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 the United Kingdom's tax treaties***

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

25. Out of the United Kingdom's 130 tax treaties, ten treaties contain a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2017) as amended by the Action 14 Final Report (OECD, 2015b), allowing taxpayers to submit a MAP request to the competent authority of either contracting state 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. Furthermore, 59 treaties include a provision equivalent to Article 25(1), first sentence, of the 2015 OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of that report.

26. The 61 remaining tax treaties can be categorised as follows:

Provision	Number of tax treaties
A variation to Article 25(1), first sentence, of the 2015 OECD Model Tax Convention as it read prior to the adoption of the Action 14 final report, whereby the taxpayer can only submit a MAP request to the competent authorities of the contracting state of which they are resident.	45*
No MAP provision included in the tax treaty.	15
A variation to Article 25(1), first sentence, of the 2015 OECD Model Tax Convention as it read prior to the adoption of the Action 14 final report, whereby (i) the taxpayer can only submit a MAP request to the competent authority of the contracting state in which it is a resident and (ii) the taxpayer can submit a MAP request irrespective of domestic available remedies, but whereby pursuant to a provision in the exchange of notes the taxpayer is also required to initiate these remedies when submitting a MAP request.	1

\*These 45 treaties include the treaty with former Czechoslovakia that the United Kingdom continues to apply to the Czech Republic and the Slovak Republic and the treaty with former Yugoslavia that the United Kingdom continues to apply to Bosnia and Herzegovina, Montenegro and Serbia.

27. The 45 treaties mentioned in the first row of the table are considered not to contain the full equivalent of Article 25(1), first sentence, of the 2015 OECD Model Tax Convention as it read prior to the adoption of the Action 14 final report, 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 all 45 treaties are considered to be in line with this part of element B.1:

- The relevant tax treaty does not include a non-discrimination provision and only applies to residents of one of the states (four 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 (40 treaties) and
- The non-discrimination provision of the relevant tax treaty does not include the equivalent of Article 24(1) of the OECD Model Tax Convention relating to nationals (one treaty).

28. The treaty mentioned in the last row of the table incorporates a provision in the exchange of notes to this tax treaty, which reads:

With respect to Article 26 (Mutual agreement procedure) of the Convention is understood that an adjustment of taxes pursuant to that Article may be made only prior to the final determination of such taxes. It is further understood that, in the case of ..., the preceding sentence means that invoking the mutual agreement procedure does not relieve a taxpayer of the obligation to initiate the procedures of domestic law for solving tax disputes.

29. 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. This tax treaty is therefore considered not to be in line with this part of element B.1.

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

30. Out of the United Kingdom’s 130 tax treaties, 44 contain a provision equivalent to Article 25(1), second sentence, of the OECD Model Tax Convention allowing taxpayers to submit a MAP request within a period of three years from the first notification of the action resulting in taxation not in accordance with the provisions of the particular tax treaty.

31. The remaining 86 treaties that do not contain such provision can be categorised as follows:

Provision	Number of tax treaties
No MAP provision included in the tax treaty	15
Filing period less than three years for a MAP request (two years)	1
No filing period for a MAP request*	70

\*These 70 treaties include the treaty with former Czechoslovakia that the United Kingdom continues to apply to the Czech Republic and the Slovak Republic and the treaty with former Yugoslavia that the United Kingdom continues to apply to Bosnia and Herzegovina, Montenegro and Serbia.

32. The large number of tax treaties that do not contain the second sentence of Article 25(1) of the OECD Model Tax Convention can be clarified by the fact that the United Kingdom has in paragraph 97 of the Commentary to Article 25 of the OECD Model Tax Convention reserved its position on Article 25(1), second sentence, on the grounds that it conflicts with the six year time limit under its domestic legislation.

*Peer input*

33. Several peers reported that the provisions of their tax treaty with the United Kingdom does not meet all the requirements of the relevant elements of the Action 14 Minimum Standard and that they envisage implementing these elements by signing the Multilateral Instrument.

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

34. As noted in paragraphs 27-28 above, in all but one of the United Kingdom’s tax treaties taxpayers can file a MAP request irrespective of domestic remedies. In this respect, the United Kingdom reported that access to MAP is available regardless of whether for the relevant case under review domestic available remedies are still pending or where already concluded. Section 423050 of its International Manual on transfer pricing and the mutual agreement procedure specifies how its competent authority operates MAP in relation to domestic available remedies, emphasising that MAP is available regardless of domestic available remedies.

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

35. Pursuant to section 125(3) of TIOPA 2010, a MAP request must be presented before the expiration of six years following the end of the fiscal year to which the case relates, or, if longer, the period specified in the applicable tax treaty. The United Kingdom reported that for the 70 tax treaties mentioned in paragraph 31 above that do not contain a filing



period for MAP requests, its domestic statute of limitation of six years applies. Where a MAP request will be submitted after expiration of this period, the United Kingdom reported its competent authority will not grant access to MAP, which policy has been documented in section 423040 of the International Manual on transfer pricing and the mutual agreement procedure.

36. While the United Kingdom's policy as described above was not reviewed in stage 1 of the peer review process and the United Kingdom could thus not follow-up on any recommendations in this respect, this policy bears the risk that taxpayers can under these treaties not file a MAP request within a period of at least three years as from the first notification of the action resulting in taxation not in accordance with the provisions of a tax treaty.

37. The United Kingdom reported that since 1 January 2017 it has denied access to MAP in one case due to a late filing of the MAP request by the taxpayer. The United Kingdom analysed whether it was possible to resolve the case on the basis of domestic legislation, but such was not possible. The competent authority of the treaty partner was notified of this denial of access. The United Kingdom clarified that this MAP request was not made under any of the 70 of the United Kingdom's tax treaties that do not contain a filing period for MAP requests.

### ***Recent developments***

#### *Bilateral modifications*

38. The United Kingdom signed new treaties with six treaty partners, four of which concern the replacement of an existing tax treaty and one concerns a treaty partner for which the United Kingdom previously continued to apply the treaty with the former USSR. The sixth treaty is a newly negotiated treaty with a treaty partner with which there was no treaty yet in place. The United Kingdom also signed amending protocols to existing tax treaties with three treaty partners. Two of the six newly signed treaties and one of the three amending protocols have already entered into force. The ratification procedures for the four remaining treaties have not been completed by either treaty partner, whereas the United Kingdom ratified the remaining two amending protocols.

39. Concerning the first sentence of Article 25(1), five of the six newly negotiated treaties and all three amending protocols contain a provision that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention as amended by the Action 14 final report, allowing taxpayers to file a MAP request to either competent authority. While the eight existing treaties for which a new treaty or an amending protocol has been signed were already in line with element B.1 regarding the first sentence of Article 25(1), they only allowed the filing of a MAP request to the competent authority of the state where the taxpayer is a resident. The sixth treaty concerns a new treaty with a treaty partner for which there is no existing tax treaty in place. This treaty contains the equivalent of Article 25(1), first sentence, of the 2015 OECD Model Tax Convention, as it read prior to the adoption of the Action 14 final report.

40. Concerning the filing period for MAP requests, two of the six newly negotiated treaties and two of the amending protocols contain the second sentence of Article 25(1) of the OECD Model Tax Convention, whereas the treaty currently in force does not contain a filing period of MAP requests.

41. The effects of these newly signed treaties and amending protocols have been reflected in the analysis above where they have relevance. This *inter alia* concerns a change of the number of tax treaties that now allow the filing of a MAP request to either contracting state from two to ten and the number of treaties that allow a filing period of three years for such requests to 44.

### *Multilateral Instrument*

42. The United Kingdom signed the Multilateral Instrument and has deposited its instrument of ratification on 29 June 2018. The Multilateral Instrument has for the United Kingdom entered into force on 1 October 2018.

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

43. 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 as amended by the Action 14 final report 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 2015 OECD Model Tax Convention as it read prior to the adoption of the Action 14 final report. 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 2015 OECD Model Tax Convention as it read prior to the adoption of the Action 14 final report. Article 16(4)(a)(i) will not take effect for a tax treaty 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.

44. With the signing of the Multilateral Instrument, the United Kingdom 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 as amended by the Action 14 final report, allowing taxpayers to submit a MAP request to the competent authority of either contracting state. In other words, where under the United Kingdom's tax treaties taxpayers currently have to submit a MAP request to the competent authority of the contracting state of which they are a resident, the United Kingdom opted to modify these treaties allowing taxpayers to submit a MAP request to the competent authority of either contracting state. In this respect, the United Kingdom listed 118 of its 130 treaties as a covered tax agreement under the Multilateral Instrument and made, on the basis of Article 16(6)(a), for 104 a notification that they contain a provision that is equivalent to Article 25(1), first sentence, of the 2015 OECD Model Tax Convention as it read prior to the adoption of the Action 14 final report.<sup>1</sup> Four of these 118 treaties, however, concern the treaties mentioned in paragraph 25 above that already allows the submission of a MAP request to either competent authority and for that reason are not taken into account in the below analysis. In other words, only 114 treaties are taken into account.

45. In total, 49 of the 114 relevant treaty partners are not a signatory to the Multilateral Instrument, whereas one did not list its treaty with the United Kingdom under that instrument, 20 reserved, pursuant to Article 16(5)(a), the right not to apply the first sentence of Article 16(1) to its existing tax treaties and three did not list their treaty with the United Kingdom under Article 16(6)(a). All remaining 41 treaty partners listed their treaty with the United Kingdom as having a provision that is equivalent to Article 25(1), first sentence, of the 2015 OECD Model Tax Convention as it read prior to the adoption of the Action 14 final report.<sup>2</sup>

46. Of these 41 treaty partners, four already deposited their instrument of ratification of the Multilateral Instrument, following which the Multilateral Instrument has entered into force for the treaties between the United Kingdom and these treaty partners, and therefore has modified these four treaties to include the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention as amended by the Action 14 final report. For the remaining 37 treaties, the instrument will, upon entry into force for these treaties, modify them to include this equivalent.

47. Furthermore, for the four treaties mentioned above where either the United Kingdom or the relevant treaty partners did not make a notification on the basis of Article 16(6)(a), the Multilateral Instrument will only supersede these treaties to the extent that the provisions contained therein are incompatible with the first sentence of Article 16(1). Since three of these four treaties do not contain a MAP provision, whereas one contains the equivalent of Article 25(1), first sentence, of the 2015 OECD Model Tax Convention as it read prior to the adoption of the Action 14 final report, they are considered incompatible with the first sentence of Article 16(1). As none of the treaty partners have deposited their instrument of ratification, these four treaties will be superseded upon entry into force of the Multilateral Instrument for these treaties to include the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention.

48. In view of the above, for those 16 treaties identified in paragraphs 27-29 above that are considered not containing the equivalent of Article 25(1), first sentence, of the 2015 OECD Model Tax Convention as it read prior to the adoption of the Action 14 final report, one is included in the list of 40 treaties that will be modified via the Multilateral Instrument. Furthermore, three of the 16 treaties will be superseded by that instrument with a view to allow taxpayers to submit a MAP request to the competent authority of either contracting state.

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

49. 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 – 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.

50. In regard of the tax treaty identified in paragraph 31 above that contain a filing period for MAP requests of less than three years, the United Kingdom listed this treaty as a covered tax agreement under the Multilateral Instrument and made, pursuant to Article 16(6)(b)(i), a notification that it does not contain a provision described in Article 16(4)(a)(ii). The relevant treaty partner is a signatory to the Multilateral Instrument, listed its tax treaty with the United Kingdom under that instrument and also made such a notification. Therefore, at this stage, the Multilateral Instrument will, upon on entry into force for this treaty, modify this treaty to include the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention.

#### *Other developments*

51. As was reflected in the anticipated modifications section of the stage 1 peer review report, the United Kingdom has applied for the withdrawal of the reservation on

Article 25(1), second sentence, as mentioned under paragraph 32 above. With the 2017 update to the OECD Model Tax Convention, this reservation is no longer contained.

52. Furthermore, as is described in the Introduction, for those treaties that are not in line with one or more elements of the Action 14 Minimum Standard and will not be modified by the Multilateral Instrument, the United Kingdom has put in place a plan for bringing these treaties in line with that standard. Concerning the 13 treaties that are not in line with the element B.1 and will not be modified or superseded by the Multilateral Instrument (all 14 treaties with respect to the first sentence of Article 25(1) of the OECD Model Tax Convention), the United Kingdom reported it is currently negotiating with one treaty partner on the amendment or replacement of an existing tax treaty, which *inter alia* relate to the Action 14 Minimum Standard. Furthermore, three treaties are included in the list of 15 treaties for which the United Kingdom will request the relevant treaty partner to negotiate an update to the treaty.

### *Peer input*

53. Of the peers that provided input during stage 2, seven provided input in relation to their tax treaty with the United Kingdom. Of these peers, five provided input in relation element B.1. One peer mentioned its treaty with the United Kingdom is not a covered tax agreement under the Multilateral Instrument, but that it has negotiated with the United Kingdom on the replacement of the existing treaty in force, for which the signatory process is in preparation and which will be fully in line with the Action 14 Minimum Standard. Three other peers mentioned that their treaty with the United Kingdom will be modified by the Multilateral Instrument as regards the first sentence of Article 25(1) of the OECD Model Tax Convention, which conforms with the analysis in this element. Another peer mentioned it recently signed an amending protocol with the United Kingdom and which meets the requirements under element B.1, allowing the filing of a MAP request to either competent authority.

### *Anticipated modifications*

54. For the remaining nine treaties that are not in line with element B.1 and will not be modified by the Multilateral Instrument and for which no bilateral negotiates are envisaged, scheduled or pending, the United Kingdom reported that it will approach the treaty partners to bring these treaties in line with element B.1 when the prioritised negotiations as described above have been finalised. Regardless, the United Kingdom reported it will seek to include Article 25(1), first and second sentence, of the OECD Model Tax Convention, as amended by the Action 14 final report in all of its future tax treaties.

55. Further to the above, the United Kingdom indicated that it envisages updating its MAP guidance to highlight that where a tax treaty does not contain a filing period for MAP requests, there is a risk that domestic time limits have expired when such request is submitted due to a late audit at the level of the treaty partner. To this end the following paragraph will be added to the International Manual on transfer pricing and the mutual agreement procedure:

The United Kingdom recognises that there is a potential risk in respect of older tax treaties, with no specific time limits, that a taxpayer may find that if they wait until the action which they consider has led to or will lead to taxation not in accordance with the tax treaty has occurred then that taxpayer may have less than 3 years from the date of the action to the expiry of the UK time limit for making a request for

MAP or, in an extreme case, that the UK time limit may have expired by the date of that action. To mitigate that risk, the UK Competent Authority would encourage taxpayers facing such circumstances to submit a protective MAP request (see INTM 423050) at an early stage in order to preserve their right to make a request for MAP in accordance with the OECD's Minimum Standard.

### Conclusion

	Areas for improvement	Recommendations
[B.1]	<p>16 out of 130 tax treaties do not contain a provision that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention. Of these 16 treaties:</p> <ul style="list-style-type: none"> <li>• Three are expected to be superseded by the Multilateral Instrument to include the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention as amended by the Action 14 final report.</li> <li>• 13 will not be modified or superseded by that instrument to include the required provision. With respect to these 13 treaties: <ul style="list-style-type: none"> <li>- Four are included in the list of treaties for which negotiations are envisaged, scheduled or pending</li> <li>- For the remaining nine no actions have been taken or are planned to be taken, but are included in the plan for renegotiations.</li> </ul> </li> </ul>	<p>For the 13 treaties that will not be modified or superseded by the Multilateral Instrument to include the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention, as it read as amended in the Action 14 final report, the United Kingdom should:</p> <ul style="list-style-type: none"> <li>• Follow-up on its plan to initiate bilateral negotiations or continue such negotiations with respect to the four treaty partners to include the required provision.</li> <li>• Also request the inclusion of the required provision in the remaining nine treaties in accordance with its plan for renegotiations.</li> </ul> <p>In both instances this concerns a provision that is equivalent to Article 25(1), first sentence of the OECD Model Tax Convention either:</p> <ol style="list-style-type: none"> <li>a. As amended in the Action 14 final report; or</li> <li>b. As it read prior to the adoption of the Action 14 final report, thereby including the full sentence of such provision.</li> </ol>
	<p>Where tax treaties do not include a time limit for submission of a MAP request, applicable rules under domestic legislation may lead to a filing period of less than three years as from the first notification of the action resulting in taxation not in accordance with the provisions of a tax treaty.</p>	<p>The United Kingdom should ensure that where its domestic time limits apply for filing of MAP requests, in the absence of a provision in its tax treaties, such time limits do not prevent taxpayers from having access to MAP if a request thereto is made within a period of three years as from the first notification of the action resulting in taxation not in accordance with the provisions of a tax treaty. To mitigate this risk, the United Kingdom could follow its stated intention to update its guidance in accordance with paragraph 55.</p>

### [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).

56. 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

include 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***

57. Out of the United Kingdom’s 130 treaties, ten treaties currently contain a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention as amended by the Action 14 final report, allowing taxpayers to submit a MAP request to the competent authority of either treaty partner. In addition, as was also discussed under element B.1, three of these 130 treaties have been modified by the Multilateral Instrument to include the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention as amended by the Action 14 final report, also allowing taxpayers to submit a MAP request to the competent authority of either treaty partner and another 37 treaties will, upon entry into force for these treaties, be modified by this instrument to include such equivalent. Furthermore, for three treaties the Multilateral Instrument will, upon entry into force of the Multilateral Instrument, be superseded by that instrument.

58. For the remaining 77 tax treaties that currently do not contain a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention as changed by the Action 14 final report, the United Kingdom reported that its competent authority in practice notifies and consults its treaty partners where access to MAP is denied or when it considers the objection raised in the MAP request not to be justified. The relevant process, and the steps to be taken in that process, has been documented in the internal instructions for staff handling MAP cases, which they are required to follow. Furthermore, in section 8 of the United Kingdom’s MAP guidance and in section 423030 of its International Manual on transfer pricing and the mutual agreement procedure, it is stated that where the competent authority considers that the MAP request is invalid, it will write to the competent authority of the treaty partner setting out the reasons underlying this consideration and inviting the other competent authority to provide its views before the decision is made whether the MAP request will be accepted or rejected.

### ***Recent developments***

59. As mentioned above, the United Kingdom in 2017 documented the steps to be followed in its bilateral notification/consultation process in the internal instructions for staff handling MAP cases, as also that its MAP guidance describes this process.

### ***Practical application***

#### ***Period 1 January 2015-31 December 2016 (stage 1)***

60. The United Kingdom reported that in the period 1 January 2015-31 December 2016 its competent authority has for none of the MAP requests it received decided that the objection raised by taxpayers in such request was not justified. The 2016 MAP statistics

submitted by the United Kingdom show that one of its MAP cases was closed with the outcome “objection not justified”. The decision in this case, however, was made by the competent authority of its treaty partner, not by that of the United Kingdom.

61. All peers that provided input indicated not being aware of any cases for which the United Kingdom’s competent authority denied access to MAP in the period 1 January 2015-31 December 2016. They also reported not having being consulted/notified of a case where the competent authority of the United Kingdom considered the objection raised in a MAP request as not justified, which can be clarified by the fact that no such instances have occurred in the United Kingdom during this period.

*Period 1 January 2017-31 August 2018 (stage 2)*

62. The United Kingdom reported that also since 1 January 2017 its competent authority has for none of the MAP requests it received decided that the objection raised by taxpayers in such request was not justified. The 2017 MAP statistics submitted by the United Kingdom show that three of its MAP cases were closed with the outcome “objection not justified”. Also for these cases the decision hereto was made by the competent authority of its treaty partners, not by that of the United Kingdom.

63. All peers that provided input during stage 1 also indicated that since 1 January 2017 they are not being aware of any cases for which the United Kingdom’s competent authority considered the objection raised in a MAP request as not justified. They also reported not having been consulted/notified in such cases, which can be clarified by the fact that no such instances have occurred in the United Kingdom since that date.

***Anticipated modifications***

64. The United Kingdom did not indicate that it anticipates any modifications in relation to element B.2.

***Conclusion***

	Areas for improvement	Recommendations
[B.2]	-	-

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

Jurisdictions should provide access to MAP in transfer pricing cases.

65. 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. Countries should thus provide access to MAP in transfer pricing cases.

### ***Legal and administrative framework***

66. Out of the United Kingdom’s 130 tax treaties, 84 contain a provision equivalent to Article 9(2) of the OECD Model Tax Convention, requiring their state to make a correlative adjustment in case a transfer pricing adjustment is imposed by the other treaty partner. Furthermore, in 22 tax treaties such a provision is not contained.<sup>3</sup> With respect to the remaining 24 treaties, the following analysis is made:

- In 19 treaties this provision is not contained in Article 9, but in the article on the elimination of double taxation.<sup>4</sup> With respect to these treaties, the United Kingdom indicated that this may effectively not lead to the same result as under Article 9(2), as elimination of double taxation may not always be provided for (i.e. in cases of losses).
- In four treaties a provision is contained that is based on Article 9(2) of the OECD Model Tax Convention, but this provision uses additional or different wording and therefore is considered not being equivalent thereof.
- In one treaty a provision is contained that is based on Article 9(2) of the OECD Model Tax Convention, but this provision requires that competent authorities have to consult each other before granting a corresponding adjustment and therefore is considered not being equivalent thereof.

67. The United Kingdom is a signatory to the EU Arbitration Convention, which provides for a mutual agreement procedure supplemented with an arbitration procedure for settling transfer pricing disputes and disputes on the attribution of profits to permanent establishments between EU Member States.

68. Access to MAP should be provided in transfer pricing cases regardless of whether the equivalent of Article 9(2) is contained in the United Kingdom’s tax treaties and irrespective of whether its domestic legislation enables the granting of corresponding adjustments. In accordance with element B.3, as translated from the Action 14 Minimum Standard, the United Kingdom indicated that it will always provide access to MAP for transfer pricing cases and is willing to make corresponding adjustments, regardless of whether the equivalent of Article 9(2) of the OECD Model Tax Convention is contained in its tax treaties.

### ***Recent developments***

#### ***Bilateral modifications***

69. The United Kingdom signed new treaties with six treaty partners, four of which concern the replacement of an existing tax treaty and one concerns a treaty partner for which the United Kingdom previously continued to apply the treaty with the former USSR. The sixth treaty is a newly negotiated treaty with a treaty partner with which there was no treaty yet in place. All six treaties contain a provision that is equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention, which also was the case for five treaties for which currently a treaty is in force or continues to be applied by the United Kingdom. Of these six treaties, two have already entered into force and for the remaining four ratification procedures have not been completed by either treaty partner. Furthermore, the United Kingdom also signed three amending protocols to existing treaties

70. With respect to the inclusion of Article 9(2) of the OECD Model Tax Convention, three of these treaties (two replacements of an existing treaty and one an amending



protocol to an existing treaty) now contain the equivalent of Article 9(2), which was not the case for the three treaties currently in force. In a fourth treaty Article 9(2) is also contained, which concerns the newly negotiated treaty. The remaining five tax treaties already contained Article 9(2) of the OECD Model Tax Convention. The effects of these newly signed treaties and amending protocols have been reflected in the analysis above where they have relevance.

### *Multilateral Instrument*

71. The United Kingdom signed the Multilateral Instrument and has deposited its instrument of ratification on 29 June 2018. The Multilateral Instrument has for the United Kingdom entered into force on 1 October 2018.

72. Article 17(2) of that instrument stipulates that Article 17(1) – containing the equivalent of Article 9(2) of the OECD Model Tax Convention – 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. 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 not to apply Article 17(2) for those tax treaties that already contain the equivalent of Article 9(2) of the OECD Model Tax Convention, 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. 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).

73. The United Kingdom has not reserved, pursuant to Article 17(3), the right not to apply Article 17(2) of the Multilateral Instrument for those treaties that already contain a provision equivalent to Article 9(2) of the OECD Model Tax Convention. In regard of the 46 tax treaties identified in paragraph 66 above that are considered not to contain a provision that is equivalent to Article 9(2) of the OECD Model Tax Convention, the United Kingdom listed 42 as a covered tax agreement under the Multilateral Instrument and for 22 of these 42 treaties it did make a notification on the basis of Article 17(4).<sup>5</sup>

74. With regard to those 22 treaties, six treaty partners are not a signatory to the Multilateral Instrument, whereas three have, on the basis of Article 17(3), reserved the right not to apply Article 17(2) as they considered that their treaty with the United Kingdom already contains the equivalent of Article 9(2), and nine also made a notification on the basis of Article 17(4).<sup>6</sup> Therefore, at this stage, nine of the 42 tax treaties identified above will be replaced by the Multilateral Instrument upon its entry into force for these treaties to include the equivalent of Article 9(2) of the OECD Model Tax Convention and four will be superseded to the extent that the provisions contained in those treaties relating to the granting of corresponding adjustments are incompatible with Article 17(1).

75. With regard to the remaining 20 treaties for which the United Kingdom did not make a notification on the basis of Article 17(4), 15 treaty partners are not a signatory to the Multilateral Instrument, whereas one did not list its tax treaty with the United Kingdom under that instrument and one did neither make, on the basis of Article 17(3), reserved the right not to apply Article 17(2) as it considered that its treaty with the United Kingdom already contains the equivalent of Article 9(2), nor did they make a notification on the basis of Article 17(4). Therefore, at this stage, three of the 20 tax treaties will, upon its entry into force for these treaties, be superseded by the Multilateral Instrument to include the equivalent of Article 9(2) of the OECD Model Tax Convention, but only to the extent that the provisions contained in those treaties relating to the granting of corresponding adjustments are incompatible with Article 17(1).<sup>7</sup>

### *Other developments*

76. As is described in the Introduction, for those treaties that are not in line with one or more elements of the Action 14 Minimum Standard and will not be modified by the Multilateral Instrument, the United Kingdom has put in place a plan for bringing these treaties in line with that standard. While having Article 9(2) is only a best practice, nine tax treaties that do not contain the equivalent of Article 9(2) of the OECD Model Tax Convention and that will not be modified or superseded by the Multilateral Instrument, are included in the first batch of 15 treaties for which the United Kingdom will request the relevant treaty partner to negotiate an update to the treaty, also to contain such equivalent.

77. Further to the above, as will be further discussed under element B.8, the United Kingdom has in 2018 updated its MAP guidance and its International Manual on transfer pricing and the mutual agreement procedure, *inter alia* to reflect that taxpayers have access to MAP in transfer pricing cases. Section 423020 of the International Manual on transfer pricing and the mutual agreement procedure explicitly describes that taxpayers have access to MAP in transfer pricing cases.

### ***Practical application***

#### *Period 1 January 2015-31 December 2016 (stage 1)*

78. The United Kingdom reported that in the period 1 January 2015-31 December 2016 it has not denied access to MAP on the basis that the case concerned a transfer pricing case.

79. All peers that provided input indicated not being aware of a denial of access to MAP by the United Kingdom in the period 1 January 2015-31 December 2016 on the basis that the case concerned was a transfer pricing case. One peer, however, noted that in 2015 it rejected one MAP request under the treaty with the United Kingdom that concerned a transfer pricing case. This peer reported that its own competent authority made such rejection (and not the competent authority of the United Kingdom) on the ground that one of the associated enterprises was not an entity resident in the United Kingdom and not on the ground that the case itself concerned a transfer pricing case.

#### *Period 1 January 2017-31 August 2018 (stage 2)*

80. The United Kingdom reported that since 1 January 2017 it has also not denied access to MAP on the basis that the case concerned a transfer pricing case.

81. All peers that provided input during stage 1 stated in stage 2 that the update report provided by the United Kingdom fully reflects their experience with the United Kingdom since 1 January 2017 and/or there are no additions to the previous input given.

82. In addition, one peer mentioned that it has had no issues concerning access to MAP with the United Kingdom, whereas another peer mentioned its experiences with the United Kingdom concerning access to MAP have been positive.

### *Anticipated modifications*

83. The United Kingdom reported that it is in favour of including Article 9(2) of the OECD Model Tax Convention in its tax treaties where possible and that it will seek to include this provision in all of its future tax treaties. Other than this, the United Kingdom did not indicate that it anticipates any modifications in relation to element B.3.

### *Conclusion*

	Areas for improvement	Recommendations
[B.3]	-	-

## **[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.

84. 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*

85. None of the United Kingdom's 130 tax treaties allows 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, also the domestic law and/or administrative processes of the United Kingdom do not include a provision allowing its competent authority to limit access to the 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.

86. The United Kingdom reported that it considers issues relating to the application of a treaty anti-abuse provision and the question whether the application of a domestic anti-abuse provision is in conflict with the provision of a tax treaty are within the scope of the MAP.

### ***Recent developments***

87. As will be further discussed under element B.8, the United Kingdom updated in 2018 its MAP guidance and its International Manual on transfer pricing and the mutual agreement procedure. Section 423030 of this manual now explicitly stipulates that taxpayers have access to MAP in such case or in cases in which there is 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.

### ***Practical application***

#### *Period 1 January 2015-31 December 2016 (stage 1)*

88. The United Kingdom reported that it has in the period 1 January 2015-31 December 2016 not denied access to MAP in cases 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 conflict with the provisions of a tax treaty.

89. All peers that provided input indicated not being aware of a denial of access to MAP by the United Kingdom in relation to the application of treaty and/or domestic anti-abuse provisions in the period 1 January 2015-31 December 2016.

#### *Period 1 January 2017-31 August 2018 (stage 2)*

90. The United Kingdom reported that since 1 January 2017 it has also not denied access to MAP in cases 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 conflict with the provisions of a tax treaty.

91. All peers that provided input during stage 1 stated in stage 2 that the update report provided by the United Kingdom fully reflects their experience with the United Kingdom since 1 January 2017 and/or there are no additions to the previous input given. In addition, three peers provided specific input, one of which mentioned that it has had no issues concerning access to MAP with the United Kingdom and another noted that its experiences with the United Kingdom concerning access to MAP have been positive. Furthermore, the third peer mentioned that its competent authority has accepted a MAP request regarding the application of anti-abuse provision and subsequently approached the United Kingdom to initiate the bilateral phase of the MAP. In a response, the United Kingdom confirmed the existence of this case, but clarified that, after some initial miscommunication, the competent authorities had agreed to suspend the MAP as there was pending litigation on the case in the United Kingdom. The United Kingdom further mentioned that subject to the litigation, then the United Kingdom would expect the case to be considered by the competent authorities in accordance with the relevant tax treaty in a normal manner.

### ***Anticipated modifications***

92. The United Kingdom did not indicate that it anticipates any modifications in relation to element B.4.

## Conclusion

	Areas for improvement	Recommendations
[B.4]	-	-

### [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.

93. 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 independent from the audit and examination function and which is only accessible through a request by taxpayers.

#### *Legal and administrative framework*

##### *Audit settlements*

94. The United Kingdom reported that under its domestic law it is possible that taxpayers and the HMRC enter into a settlement agreement during the course of or after ending of an audit. The United Kingdom further reported that it will not preclude access to MAP in cases where the issues presented by the taxpayer in that request have already been resolved through an audit settlement between the taxpayer and HMRC. In more detail, the United Kingdom indicated that although it is unlikely that there will be an audit settlement before a MAP request is submitted, access to MAP will be granted if such settlement was already entered into.

95. In section 423030 of its International Manual on transfer pricing and the mutual agreement procedure, it is specifically addressed that the United Kingdom will not deny access to MAP in cases where taxpayers and HMRC have entered into an audit settlement. It is furthermore stated that HMRC is instructed not to agree with taxpayers on adjustments on the condition that taxpayers will not seek competent authority assistance in MAP.

##### *Administrative or statutory dispute settlement/resolution process*

96. The United Kingdom reported that it has no administrative or statutory dispute settlement/resolution process in place that allows the United Kingdom to deny access to MAP for issues resolved through that process.

##### *Recent developments*

97. There are no recent developments in the United Kingdom with respect to element B.5 other than in relation to updates to the MAP guidance and the International Manual on transfer pricing and the mutual agreement procedure, which will separately be discussed separately under element B.10.

***Practical application******Period 1 January 2015-31 December 2016 (stage 1)***

98. The United Kingdom reported that it has in the period 1 January 2015-31 December 2016 not denied access to MAP for cases where the issue presented by the taxpayer has already been dealt with in an audit settlement between the taxpayer and HMRC.

99. All peers that provided input have indicated not being aware of a denial of access to MAP by the United Kingdom in the period 1 January 2015-31 December 2015 in case there was already an audit settlement between the taxpayer and HMRC.

***Period 1 January 2017-31 August 2018 (stage 2)***

100. The United Kingdom reported that since 1 January 2017 it has also not denied access to MAP for cases where the issue presented by the taxpayer has already been dealt with in an audit settlement between the taxpayer and HMRC.

101. All peers that provided input during stage 1 stated in stage 2 that the update report provided by the United Kingdom fully reflects their experience with the United Kingdom since 1 January 2017 and/or there are no additions to the previous input given. In addition, one peer mentioned that it has had no issues concerning access to MAP with the United Kingdom, whereas another peer mentioned its experiences with the United Kingdom concerning access to MAP have been positive.

***Anticipated modifications***

102. The United Kingdom did not indicate that it anticipates any modifications in relation to element B.5.

***Conclusion***

	Areas for improvement	Recommendations
[B.5]	-	-

**[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.

103. 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 publicly available.

***Legal framework on access to MAP and information to be submitted***

104. The information and documentation that the United Kingdom requires taxpayers include in a request for MAP assistance are discussed under element B.8.

105. The United Kingdom reported that its competent authority requires that taxpayers include sufficient information and documentation in its MAP request. The list of information and documentation required is specified in section 423130 of its International Manual on transfer pricing and the mutual agreement procedure and which applies for all MAP requests submitted under its tax treaties. Some tax treaties, however, may require that certain information is submitted before a case can be considered as presented for purposes of triggering the period after which an arbitration procedure can be requested.

106. When a MAP request is submitted, the United Kingdom clarified that the case handler will analyse whether all required information and documentation is submitted, as also whether additional information is required for consideration of the case. If not all required information or documentation is submitted, or where additional information is required, the competent authority will request the taxpayer to provide this information. The United Kingdom further reported that in practice it expects that taxpayers to respond in a timely manner. While there are no specific deadlines set for submitting the requested additional information and the case handlers are expected to exercise their judgement on a case by case basis, taxpayers are generally requested to provide any additional information within two months upon request.

107. The United Kingdom further reported that where taxpayers do not provide the requested information, and the absence of such information will impede the ability of its competent authority to resolve the case in a mutual agreement procedure, then the taxpayer will be informed hereof and the other competent authority concerned will be consulted. Such consultation may lead to the conclusion that the MAP case is considered as effectively being withdrawn and thus that the process will be ended. For statistical purposes, the United Kingdom will report this case as closed with the outcome “objection not justified”.

### ***Recent developments***

108. There are no recent developments in the United Kingdom with respect to element B.6, other than changes to the MAP guidance and the requirements of what information should be included in a MAP request, which is discussed under element B.8.

### ***Practical application***

#### *Period 1 January 2015-31 December 2016 (stage 1)*

109. According to the United Kingdom it provides access to MAP in all cases where taxpayers have complied with the information or documentation required by its competent authority and as set out in its MAP guidance. In this respect, the United Kingdom reported it has in the period 1 January 2015-31 December 2016 not limited access to MAP on the grounds that information in the MAP request was not the information or documentation required by its competent authority.

110. All peers that provided input have indicated not being aware of a limitation of access to MAP by the United Kingdom in the period 1 January 2015-31 December 2016 in situations where taxpayers complied with information and documentation requirements set out in its MAP guidance.

*Period 1 January 2017-31 August 2018 (stage 2)*

111. The United Kingdom reported that since 1 January 2017 it has also not limited access to MAP on the grounds that information in the MAP request was not the information or documentation required by its competent authority.

112. All peers that provided input during stage 1 stated in stage 2 that the update report provided by the United Kingdom fully reflects their experience with the United Kingdom since 1 January 2017 and/or there are no additions to the previous input given. In addition, one peer mentioned that it has had no issues concerning access to MAP with the United Kingdom, whereas another peer mentioned its experiences with the United Kingdom concerning access to MAP have been positive.

*Anticipated modifications*

113. The United Kingdom did not indicate that it anticipates any modifications in relation to element B.6.

*Conclusion*

	Areas for improvement	Recommendations
[B.6]	-	-

**[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.

114. 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 includes the second sentence of Article 25(3) of the OECD Model Tax Convention, enabling them to consult together for the elimination of double taxation in cases not provided for by these treaties.

*Current situation of the United Kingdom's tax treaties*

115. Out of the United Kingdom's 130 tax treaties, 54 contain a provision equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention allowing their competent authorities to consult together for the elimination of double taxation in cases not provided for in their tax treaties. The remaining 76 treaties do not contain a provision that is based on, or equivalent to, Article 25(3), second sentence, of the OECD Model Tax Convention.<sup>8</sup> 15 of these 76 treaties concern the treaties mentioned in the Introduction that do not provide for a MAP article at all.

116. Furthermore, two of these 76 treaties have a limited scope of application.<sup>9</sup> This concerns tax treaties that only apply to a certain category of income or a certain category of taxpayers, whereby the structure and articles of the OECD Model Tax Convention are not followed. As these treaties were intentionally negotiated with a limited scope, the inclusion of Article 25(3), second sentence, of the OECD Model Tax Convention



would contradict the object and purpose of those treaties and such inclusion would also be inappropriate, as it would allow competent authorities the possibility to consult in cases that have intentionally been excluded from the scope of a tax treaty. For this reason, therefore, there is a justification not to contain Article 25(3), second sentence, of the OECD Model Tax Convention for those two treaties with a limited scope of application.

117. Several peers reported that the provisions of their tax treaty with the United Kingdom do not meet all the requirements of the relevant elements of the Action 14 Minimum Standard and that they envisage implementing these elements by signing the Multilateral Instrument.

### ***Recent developments***

#### *Bilateral modifications*

118. The United Kingdom signed new treaties with six treaty partners, four of which concern the replacement of an existing tax treaty and one concerns a treaty partner for which the United Kingdom previously continued to apply the treaty with the former USSR. The sixth treaty is a newly negotiated treaty with a treaty partner with which there was no treaty yet in place. All six treaties contain a provision that is equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention, which also was the case for five treaties for which currently a treaty is in force or continues to be applied by the United Kingdom. Of these six treaties, two have already entered into force and for the remaining four ratification procedures have not been completed by either treaty partner. Furthermore, the United Kingdom also signed three amending protocols to existing treaties. In one of the newly signed treaties and two of the amending protocols, a provision that is equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention is contained, which was not the case in the existing treaty that will be replaced by this newly signed treaty upon entry into force. The same applies for the newly signed treaty with the treaty partner for which the United Kingdom previously continued to apply the treaty with the former USSR. The effects of these newly signed treaties and amending protocols have been reflected in the analysis above where they have relevance.

#### *Multilateral Instrument*

119. The United Kingdom signed the Multilateral Instrument and has deposited its instrument of ratification on 29 June 2018. The Multilateral Instrument has for the United Kingdom entered into force on 1 October 2018.

120. 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 – 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. 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.

121. In regard of the 74 comprehensive tax treaties identified above that are considered not to contain the equivalent of Article 25(3), second sentence, of the OECD Model

Tax Convention, the United Kingdom listed 62 as a covered tax agreement under the Multilateral Instrument and made, pursuant to Article 16(6)(d)(ii), for all of them a notification that they do not contain a provision described in Article 16(4)(c)(ii). Of the relevant 62 treaty partners, 23 are not a signatory to the Multilateral Instrument, whereas one did not list its tax treaty with the United Kingdom under that instrument. All remaining 38 treaty partners listed their treaty with the United Kingdom as a covered tax agreement and also made a notification pursuant to Article 16(6)(d)(ii).<sup>10</sup>

122. Of the 38 treaty partners mentioned above, five have deposited their instrument of ratification, following which the Multilateral Instrument has entered into force for the treaty between the United Kingdom and these treaty partners. Therefore, at this stage, the Multilateral Instrument has modified five treaty to include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention.<sup>11</sup> For the remaining 33 treaties, the instrument will, upon entry into force for these treaties, modify them to include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention.

### *Other developments*

123. As is described in the Introduction, for those treaties that are not in line with one or more elements of the Action 14 Minimum Standard and will not be modified by the Multilateral Instrument, the United Kingdom has put in place a plan for bringing these treaties in line with that standard. Concerning the 36 comprehensive tax treaties that are not in line with element B.7 and will not be modified by the Multilateral Instrument, one regards a treaty partner with which negotiations are pending. Furthermore, five treaties are included in the list of jurisdictions with which the United Kingdom has MAP cases, for which it will prioritise negotiations with these treaty partners and include them in the negotiation programme for the coming fiscal years. Furthermore, seven are included in the first batch of 15 treaties for which the United Kingdom will request the relevant treaty partner to negotiate an update to the treaty.

### *Peer input*

124. Of the peers that provided input during stage 2, seven provided input in relation to their tax treaty with the United Kingdom. Of these peers, two provided input in relation element B.7 and mentioned that their treaty with the United Kingdom will be modified by the Multilateral Instrument as regards the first sentence of Article 25(1) of the OECD Model Tax Convention, which conforms with the analysis in this element.

### *Anticipated modifications*

125. For the remaining 23 treaties that are not in line with element B.7 and will not be modified by the Multilateral Instrument and for which no bilateral negotiates are envisaged, scheduled or pending, the United Kingdom reported that it will approach the treaty partners to bring these treaties in line with element B.7 when the prioritised negotiations as described above have been finalised. Regardless, the United Kingdom reported it will seek to include Article 25(3), second sentence, of the OECD Model Tax Convention in all of its future tax treaties.

## Conclusion

	Areas for improvement	Recommendations
[B.7]	<p>76 out of 130 tax treaties do not contain a provision that is equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention.</p> <p>Of these 76 treaties, two treaties concern tax treaties with a limited scope of application. With respect to the 74 remaining comprehensive treaties:</p> <ul style="list-style-type: none"> <li>• Five have been modified by the Multilateral Instrument to contain the required provision</li> <li>• 33 are expected to be modified by that instrument to contain the required provision</li> <li>• 36 treaties will not be modified by that instrument. With respect to these 36 treaties: <ul style="list-style-type: none"> <li>- 13 are included in the list of treaties for which negotiations are envisaged, scheduled or pending</li> <li>- For the remaining 23 no actions have been taken or planned to be taken, but are included in the plan for renegotiations.</li> </ul> </li> </ul>	<p>For the 36 comprehensive 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, the United Kingdom should:</p> <ul style="list-style-type: none"> <li>• Follow-up on its plan to initiate bilateral negotiations or to continue such negotiations if they are pending for 13 of the 36 treaty partners to include the required provision</li> <li>• Also request the inclusion of the required provision in the remaining 23 treaties in accordance with its plan for renegotiations.</li> </ul>

### [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.

126. 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.

#### *The United Kingdom's MAP guidance*

127. The United Kingdom has issued rules, guidelines and procedures relating to the MAP function. These are included in Statement of Practice 1/2018, which is available at:

[https://www.gov.uk/government/publications/statement-of-practice-1-2018/  
statement-of-practice-1-2018](https://www.gov.uk/government/publications/statement-of-practice-1-2018/statement-of-practice-1-2018)

128. This document sets out the availability and practical application of the mutual agreement procedure under the tax treaties the United Kingdom entered into and under the EU Arbitration Convention. It also describes the approach of the United Kingdom on using arbitration where MAP does not lead to the elimination of double taxation within a certain timeframe.

129. Furthermore, the United Kingdom has issued an International Manual on transfer pricing, which in section 423000 also includes information on the MAP process of the United Kingdom. This manual should be read in conjunction with the MAP guidance and is available at:

[www.gov.uk/hmrc-internal-manuals/international-manual/intm423000](http://www.gov.uk/hmrc-internal-manuals/international-manual/intm423000)

130. The information contained in both documents reflects the following items:

<b>General</b>	<ul style="list-style-type: none"> <li>• Outline of the MAP function in general and the availability of MAP under the tax treaties the United Kingdom entered into, including the EU Arbitration Convention</li> <li>• Description of the legal framework for MAP and of the competent authority function in the United Kingdom, including the contact details of that competent authority.</li> </ul>
<b>Eligibility of cases for MAP</b>	<ul style="list-style-type: none"> <li>• Availability of MAP for transfer pricing cases, cases concerning the application of anti-abuse provisions, audit settlements or bona fide self-initiated adjustments, as also the availability of MAP for multilateral cases and cases concerning multiple years</li> <li>• The possibility of filing a protective MAP requests</li> <li>• The possibility of suspension of tax collection for the period a MAP case is pending</li> <li>• The absence of a statutory/administrative settlement or resolution process that may limit access to MAP</li> <li>• The notification/consultation process in place to be applied when the United Kingdom's competent authority considers that the MAP request is inadmissible.</li> </ul>
<b>MAP process</b>	<ul style="list-style-type: none"> <li>• Initiation of the MAP by taxpayers, including the manner and form in which taxpayers should submit their MAP request and to which competent authority a MAP request should be made</li> <li>• Time limits for filing of a MAP request</li> <li>• How the MAP functions in terms of steps and timing, the role of the competent authorities and the rights and role of taxpayers</li> <li>• The process for implementing MAP agreements, including the methods of granting relief and the right for taxpayers to accept or reject these agreements;</li> <li>• The consideration of interest and penalties in MAP</li> <li>• Information on its policy on arbitration, the availability of arbitration under its tax treaties, the EU Arbitration Convention and the Multilateral Instrument</li> <li>• Availability of MAP to secondary adjustments</li> <li>• Relationship with domestic available remedies and the audit process.</li> </ul>
<b>Other</b>	<ul style="list-style-type: none"> <li>• Instructions for case handlers in relation to audits and MAP.</li> </ul>

131. The MAP guidance described above, as well as the International Manual of the United Kingdom, includes detailed and comprehensive information on the availability and the use of the MAP and how its competent authority conducts the procedure in practice. This guidance includes the information 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.<sup>12</sup>

### ***Information and documentation to be included in a MAP request***

132. Section 9 of the United Kingdom's MAP guidance and section 423040 of its International Manual on transfer pricing and the mutual agreement procedure enumerate that there is no specific requirement in what format taxpayers should submit a MAP request, other than that the request should be in writing and directed to the required person. Section 423130 of the International Manual, however, includes a list of information that taxpayers as a minimum need to include in their MAP request.

133. 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 a request for MAP assistance.<sup>13</sup> In light of this list, the requirements in the United Kingdom on what information and documentation should be included in a MAP request are checked below.

- identity of the taxpayer(s) covered in the MAP request
- the basis for the request (the nature of the action giving rise to, or expected to give rise to, taxation not in accordance with the convention)
- 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
- whether the MAP request was also submitted to another authority under another instrument that provides for a mechanism to resolve treaty-related disputes
- 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.

134. Further to the above, section 423130 of the International Manual includes a list of 24 items that taxpayers need to include in their MAP request. These items, insofar as they are not reflected above, *inter alia* concern: (i) the fiscal years concerned, (ii) the office and reference number of the UK party's HMRC office, (iii) HMRC Customer Compliance Manager or HMRC other contact, (iv) exchange rates used and (v) a schedule of the time limitations in each jurisdiction in respect of the years for which relief is sought. For transfer pricing cases, the relationship between the associated enterprises should also be described, alongside providing all relevant documentation of the case under review. Furthermore, where the case concerns a transfer pricing adjustment at the level of the treaty partner, four additional items are added to the list, which primarily concerns an explanation of the relationship between the taxpayer and the other related parties, as well as documentation and argumentation that underpins the position put forward by the taxpayer. A separate list is produced for MAP requests under the EU Arbitration Convention.

135. Section 9 of the United Kingdom's MAP guidance, as well as section 423040 of its International Manual on transfer pricing and the mutual agreement procedure, further sets forth that specific treaties may require certain information to be provided before a case is considered as presented for having the deadline for initiating an arbitration procedure commence. In this regard, the United Kingdom has entered into a mutual agreement with Germany and the Netherlands and a protocol with Canada on what information should be included in a MAP request.<sup>14</sup>

136. One peer provided input in relation to element B.8. It considered that the United Kingdom's MAP guidance includes clear and informative guidance on how it conducts the mutual agreement procedure. This peer used this guidance when conducting MAPs with the United Kingdom. In addition, taxpayers also indicated that the guidance issued by the United Kingdom is clear, particularly the information and documentation to be included in a MAP request.

### ***Recent developments***

137. The United Kingdom has recently updated its MAP guidance, which is now included in Statement of Practice 1/2018 and which was published on 20 February 2018. This updated guidance replaced the previous MAP guidance, which was set forth in Statement of Practice 1/2011.<sup>15</sup> The update to its MAP guidance *inter alia* was performed to reflect:

- that taxpayers have access to MAP in transfer pricing cases, cases where an anti-abuse provision applies and where an audit settlement has been entered into
- the absence of a statutory or administrative dispute resolution/settlement system that may limit access to MAP
- that MAP is available in cases of bona fide taxpayer-initiated foreign adjustments, for multilateral disputes and the multi-year resolution of disputes
- the notification/consultation process in place in cases where a MAP request is considered to be invalid
- the availability of MAP in relation to protective requests
- the process for implementing MAP agreements
- the availability of suspension of tax collection for cases being dealt with in MAP
- the consideration of interest and penalties in MAP.

138. Furthermore, the United Kingdom also updated its International Manual on transfer pricing and the mutual agreement procedure to reflect what information taxpayers should include in its MAP request.

139. The content of this updated MAP guidance as well as the manual has been reflected above.

### ***Anticipated modifications***

140. The United Kingdom did not indicate that it anticipates any modifications in relation to element B.8.

### ***Conclusion***

	Areas for improvement	Recommendations
[B.8]	-	-

## **[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.

141. 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.<sup>16</sup>

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

142. As discussed in the Introduction, the MAP guidance of the United Kingdom is published and can be found at:

<https://www.gov.uk/government/publications/statement-of-practice-1-2018/statement-of-practice-1-2018>

143. Also its International Manual on transfer pricing and the mutual agreement procedure has been published and can be found at:

<https://www.gov.uk/hmrc-internal-manuals/international-manual/intm422000>

144. As regards its accessibility, the United Kingdom’s MAP guidance is easily found on the government website of the United Kingdom. For example, a search for “double taxation” or “mutual agreement procedure” on this website is directed towards the relevant webpage, where the public guidance on the MAP and arbitration can be found.

### ***MAP profile***

145. The MAP profile of the United Kingdom is published on the website of the OECD.<sup>17</sup> This MAP profile is complete and with detailed information. This profile includes external links which provide extra information and guidance.

### ***Recent developments***

146. As discussed under element B.8, the United Kingdom updated its MAP guidance in 2018. Furthermore, it has updated its MAP profile in September 2018 to reflect:

- changes to the contact details of the United Kingdom’s competent authority
- the recent information on statistics on bilateral APAs
- changes to the description of and links to its MAP guidance and its International Manual on transfer pricing and the mutual agreement procedure.

### ***Anticipated modifications***

147. The United Kingdom did not indicate that it anticipates any modifications in relation to element B.9.

### ***Conclusion***

	Areas for improvement	Recommendations
[B.9]	-	-

**[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.

148. 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 previous mentioned processes.

***MAP and audit settlements in the MAP guidance***

149. As previously discussed under B.5, the United Kingdom's International Manual on transfer pricing and the mutual agreement procedure addresses that HMRC is instructed not to agree with taxpayers on adjustments on the condition that taxpayers will not seek competent authority assistance. The previous version of the United Kingdom's MAP guidance, however, did not include information on whether in case of an audit settlement between HMRC and taxpayers the latter are precluded access to MAP (see further in paragraph 154).

150. Peers raised no issues with respect to the availability of audit settlements and the inclusion of information hereon in the United Kingdom's MAP guidance.

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

151. As previously mentioned under element B.5, the United Kingdom does not have an administrative or statutory dispute settlement/resolution process in place that is independent from the audit and examination functions and that can only be accessed through a request by the taxpayer.

152. All peers that provided input indicated not being aware of the existence of an administrative or statutory dispute settlement/resolution process in the United Kingdom, which can be clarified by the fact that such process is not in place.



### ***Notification of treaty partners of existing administrative or statutory dispute settlement/resolution processes***

153. As the United Kingdom does not have an internal administrative or statutory dispute settlement/resolution process available, there is no need for notifying treaty partners of such process.

### ***Recent developments***

154. As was discussed under element B.8, the United Kingdom updated its MAP guidance and its International Manual on transfer pricing and the mutual agreement procedure. Section 423030 of the international manual now clearly stipulates that the United Kingdom will not deny access to MAP in cases where taxpayers and the HMRC have entered into an audit settlement. Furthermore, it is also stated that the United Kingdom has no administrative or statutory dispute settlement/resolution process in place that allows its competent authority to deny access to MAP for issues resolved through that process. The United Kingdom guidance explains that taxpayers should analyse whether applying for such a process at the level of the treaty partner will prevent discussions between competent authorities in MAP and as such may increase the likelihood of double taxation. Where the process has been applied at the level of the treaty partner and subsequently a MAP request has been submitted and accepted at that level, the United Kingdom clarified that it will consider granting relief of double taxation. Where, however, such treaty partner cannot derogate from decisions as a result of the application of the dispute settlement/resolution process, it is emphasised that double taxation may not fully be eliminated than in MAP cases where such a process was not applied.

### ***Anticipated modifications***

155. The United Kingdom did not indicate that it anticipates any modifications in relation to element B.10.

### ***Conclusion***

	Areas for improvement	Recommendations
[B.10]	-	-

## **Notes**

1. These 104 treaties include the treaty with former Czechoslovakia that the United Kingdom continues to apply to the Czech Republic and the Slovak Republic and the treaty with former Yugoslavia that the United Kingdom continues to apply to Bosnia and Herzegovina, Montenegro and Serbia.
2. With respect to the treaty with former Czechoslovakia, which the United Kingdom continues to apply to the Czech Republic and the Slovak Republic, the Slovak Republic is one of the treaty partners that made a reservation on the basis of Article 16(5)(a) of the Multilateral Instrument. The treaty is therefore included in the list of 20 treaties. The treaty with former Czechoslovakia

will therefore not be modified concerning the Slovak Republic, but only as regards the Czech Republic. The same applies to the treaty with former Yugoslavia, which the United Kingdom continues to apply to Bosnia and Herzegovina, Montenegro and Serbia. Serbia is also one of the treaty partners that made a reservation on the basis of Article 16(5)(a) and is therefore included in the list of 20 treaties. Bosnia and Herzegovina and Montenegro are not signatories to the Multilateral Instrument.

3. These 22 treaties include the treaty with former Yugoslavia that the United Kingdom continues to apply to Bosnia and Herzegovina, Montenegro and Serbia.
4. These 19 treaties include the treaty with former Czechoslovakia that the United Kingdom continues to apply to the Czech Republic and the Slovak Republic.
5. These 42 treaties include the treaty with former Yugoslavia that the United Kingdom continues to apply to Bosnia and Herzegovina, Montenegro and Serbia, and treaty with former Czechoslovakia that the United Kingdom continues to apply to the Czech Republic and the Slovak Republic. The 22 treaties, however, only include the treaty with former Czechoslovakia that the United Kingdom continues to apply to the Czech Republic and the Slovak Republic.
6. With respect to the treaty with former Czechoslovakia, which the United Kingdom, the Czech Republic is one of the treaty partners that made a reservation on the basis of Article 17(3) of the Multilateral Instrument. The treaty mentioned regards this treaty. The treaty with former Czechoslovakia will therefore not be modified concerning the Czech Republic, but only as regards the Slovak Republic and only to the extent that the provision included in this treaty is incompatible with Article 17(1).
7. These three treaties include the treaty with former Yugoslavia that the United Kingdom continues to apply to Bosnia and Herzegovina, Montenegro and Serbia, but only as regards Serbia because Bosnia and Herzegovina and Montenegro are not signatories to the Multilateral Instrument.
8. These 76 treaties include the treaty with former Czechoslovakia that is continued to be applied to the Czech Republic and the Slovak Republic and the treaty with former Yugoslavia that is continued to being applied to Bosnia and Herzegovina, Montenegro and Serbia.
9. This concerns treaties with the British Virgin Islands and the Cayman Islands.
10. These 37 treaties include the treaty with former Czechoslovakia that the United Kingdom continues to apply to the Czech Republic and the Slovak Republic and the treaty with former Yugoslavia that is continued to being applied to Bosnia and Herzegovina, Montenegro and Serbia, but only as regards Serbia, as Bosnia and Herzegovina and Montenegro are not signatories to the Multilateral Instrument.
11. These four treaties include the treaty with former Yugoslavia that is continued to being applied to Bosnia and Herzegovina, Montenegro and Serbia, but only as regards Serbia, as Bosnia and Herzegovina and Montenegro are not signatories to the Multilateral Instrument.
12. Available at: [www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf](http://www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf).
13. Ibid.
14. The mutual agreement with Germany is available at: [www.gov.uk/government/publications/germany-tax-treaties](http://www.gov.uk/government/publications/germany-tax-treaties).
15. Reference is made to the stage 1 peer review report of the United Kingdom for a description of the MAP guidance as it read in Statement of Practice 1/2011. Available at:.
16. The shared public platform can be found at: [www.oecd.org/ctp/dispute/country-map-profiles.htm](http://www.oecd.org/ctp/dispute/country-map-profiles.htm).
17. Available at: [www.oecd.org/tax/dispute/United-Kingdom-Dispute-Resolution-Profile.pdf](http://www.oecd.org/tax/dispute/United-Kingdom-Dispute-Resolution-Profile.pdf).

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## *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.

156. It is of critical importance that in addition to allowing taxpayers to request for a MAP, tax treaties also include a provision the first sentence of Article 25(2) of the OECD Model Tax Convention (OECD, 2017), 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 the United Kingdom’s tax treaties***

157. Out of the United Kingdom’s 130 tax treaties, 115 contain a provision equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention 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.<sup>1</sup> The remaining 15 treaties that do not include such provision concern the treaties mentioned in the Introduction that do not provide for a MAP article at all.

158. Several peers reported that the provisions of their tax treaty with the United Kingdom do not meet all the requirements of the relevant elements of the Action 14 Minimum Standard and that they envisage implementing these elements by signing the Multilateral Instrument.

#### ***Recent developments***

##### ***Bilateral modifications***

159. The United Kingdom signed new treaties with six treaty partners, four of which concern the replacement of an existing tax treaty and one concerns a treaty partner for which the United Kingdom previously continued to apply the treaty with the former USSR.

The sixth treaty is a newly negotiated treaty with a treaty partner with which there was no treaty yet in place. All six treaties contain a provision that is equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention, which also was the case for five treaties for which currently a treaty is in force or continues to be applied by the United Kingdom. Of these six treaties, two have already entered into force and for the remaining four ratification procedures have not been completed by either treaty partner. Furthermore, the United Kingdom also signed three amending protocols to existing treaties, which, however, do not have relevance with respect to element C.1. The effects of these newly signed treaties and amending protocols have been reflected in the analysis above where they have relevance.

### *Multilateral Instrument*

160. The United Kingdom signed the Multilateral Instrument and has deposited its instrument of ratification on 29 June 2018. The Multilateral Instrument has for the United Kingdom entered into force on 1 October 2018.

161. 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 – 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. 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.

162. In regard of the 15 tax treaties identified above that are considered not to contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention, the United Kingdom listed all of them as a covered tax agreement under the Multilateral Instrument and made for all, pursuant to Article 16(6)(c)(i), a notification that they do not contain a provision described in Article 16(4)(b)(i). Of the relevant 15 treaty partners, 11 are not a signatory to the Multilateral Instrument, whereas one did not list its tax treaty with the United Kingdom under that instrument. The remaining three treaty partners listed their treaty with the United Kingdom as a covered tax agreement and also made a notification on the basis of Article 16(6)(c)(i).

163. Of the three treaty partners mentioned above, none have deposited their instrument of ratification. Therefore, at this stage, the Multilateral Instrument will, upon entry into force for these three treaties, modify them to include the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention.

### *Other developments*

164. As is described in the Introduction, for those treaties that are not in line with one or more elements of the Action 14 Minimum Standard and will not be modified by the Multilateral Instrument, the United Kingdom has put in place a plan for bringing these treaties in line with that standard. Concerning the 12 treaties that are not in line with element C.1 and will not be modified by the Multilateral Instrument, three are included in the first batch of 15 treaties for which the United Kingdom will request the relevant treaty partner to negotiate an update to the treaty.

*Peer input*

165. Of the peers that provided input during stage 2, seven provided input in relation to their tax treaty with the United Kingdom. None of this input, however, relates to element C.1 as the treaties to which these peers are a signatory are in line with this element. The peers for which the treaty with the United Kingdom is considered not to be in line with the requirements under element A.1 did not provide input.

*Anticipated modifications*

166. For the remaining nine treaties that are not in line with element C.1 and will not be modified by the Multilateral Instrument and for which no bilateral negotiations are envisaged, scheduled or pending, the United Kingdom reported it will approach the treaty partners to bring these treaties in line with element C.1 when the prioritised negotiations as described above have been finalised. Apart from that, the United Kingdom reported it will seek to include Article 25(2), first sentence, of the OECD Model Tax Convention in all of its future tax treaties.

*Conclusion*

	Areas for improvement	Recommendations
[C.1]	<p>15 out of 130 tax treaties do not contain a provision that is equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention. Of these 15 treaties:</p> <ul style="list-style-type: none"> <li>• Three are expected to be modified by the Multilateral Instrument to contain the required provision</li> <li>• 12 will not be modified by that instrument to contain the required provision. With respect to these 12 treaties: <ul style="list-style-type: none"> <li>- Three are included in the list of treaties for which negotiations are envisaged, scheduled or pending</li> <li>- For the remaining nine no actions have been taken or are planned to be taken, but are included in the plan for renegotiations.</li> </ul> </li> </ul>	<p>For the 12 treaties that will not be amended by the Multilateral Instrument to include the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention, the United Kingdom should:</p> <ul style="list-style-type: none"> <li>• Follow-up on its plan to initiate bilateral negotiations or continue such negotiations if they are pending for three treaty partners to include the required provision.</li> <li>• Also request the inclusion of the required provision in the remaining nine treaties in accordance with its plan for renegotiations.</li> </ul>

**[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).

167. 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***

168. Statistics regarding all tax treaty related disputes concerning the United Kingdom are published on the website of the OECD as of 2007.<sup>2</sup> The United Kingdom also publishes MAP statistics regarding transfer pricing disputes on its government website and transfer pricing disputes with EU Member States also on the website of the EU Joint Transfer Pricing Forum.<sup>3</sup>

169. The FTA MAP Forum has agreed on rules for reporting of MAP statistics (“**MAP Statistics Reporting Framework**”) for MAP requests submitted on or after 1 January 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. The United Kingdom provided their MAP statistics pursuant to the MAP Statistics Reporting Framework within the given deadline, including all cases involving the United Kingdom and of which its competent authority was aware. The statistics discussed below include both post-2015 and pre-2016 cases and the full statistics are attached to this report as Annex B and C respectively and should be considered jointly for an understanding of the MAP caseload of the United Kingdom.<sup>4</sup> With respect to post-2015 cases, the United Kingdom reported having reached out to all its MAP partners with a view to have their MAP statistics matching.

170. For the year 2016, the United Kingdom indicated that it could match its statistics with most of its MAP partners, but nine of them did not respond to its outreach. For the year 2017, the United Kingdom also mentioned it reached out to its MAP partners on several occasions, both via email correspondence and during meetings of the FTA MAP Forum. It was able to match its statistics with almost all of its MAP partners and only for a small number of MAP cases no matching was possible due to not receiving any responses from these partners.

171. Eight peers provided input on the matching of MAP statistics with the United Kingdom, all of which confirmed that they were able to match their statistics with the United Kingdom. One of these peers mentioned that contacts during the matching exercise were fruitful and led to a good result. Another reported that their competent authorities have exchanged information via email to elimination the mismatches, for which they succeeded.

172. Based on the information provided by the United Kingdom’s MAP partners, its post-2015 MAP statistics for 2016 and 2017 actually match those of its treaty partners as reported by the latter.

### ***Monitoring of MAP statistics***

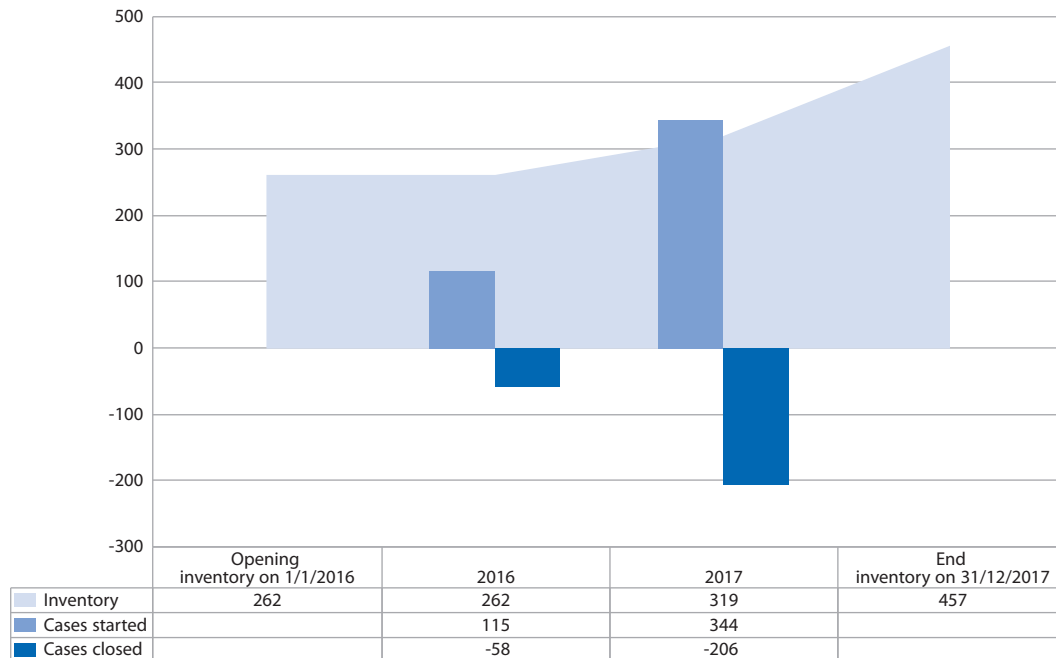
173. The United Kingdom reported that it has in place a mechanism to monitor and manage the MAP caseload with its main MAP partners. Such mechanism is not in place regarding treaty partners with which there is a limited MAP caseload.

### ***Analysis of the United Kingdom’s MAP caseload***

174. The analysis of the United Kingdom’s MAP caseload relates to the period starting on 1 January 2016 and ending on 31 December 2017.

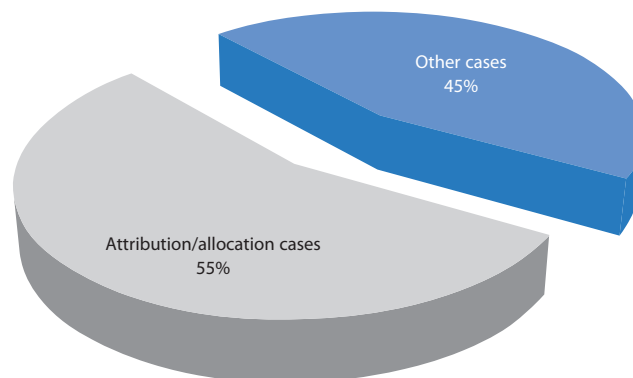
175. The following graph shows the evolution of the United Kingdom’s MAP caseload over the Statistics Reporting Period.

Figure C.1. Evolution of the United Kingdom's MAP caseload



176. At the beginning of the Statistics Reporting Period the United Kingdom had 262 pending MAP cases, of which 183 are attribution/allocation cases and 79 other MAP cases.<sup>5</sup> At the end of the Statistics Reporting Period, the United Kingdom had 457 MAP cases in its inventory, of which 252 are attribution/allocation cases and 205 other MAP cases. Consequently, the United Kingdom's pending MAP cases have increased by 74% during the Statistics Reporting Period. This increase can be broken down into an increase by 38% for attribution/allocation cases and an increase by 159% for other cases. The breakdown of the end inventory can be shown as follows:

Figure C.2. End inventory on 31 December 2017 (457 cases)

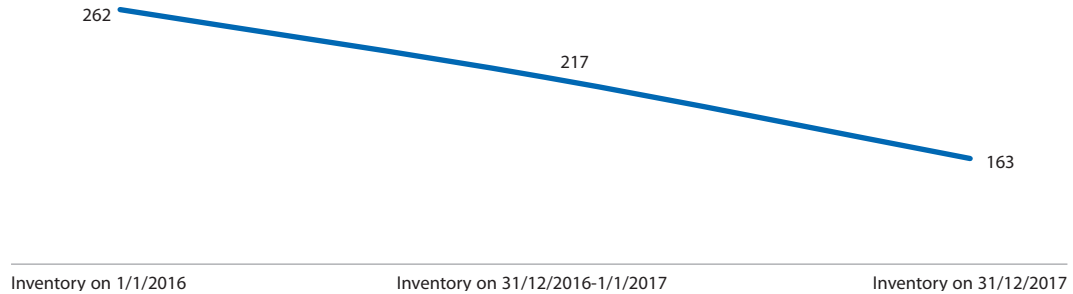




*Pre-2016 cases*

177. The following graph shows the evolution of the United Kingdom’s pre-2016 MAP cases over the Statistics Reporting Period.

Figure C.3. Evolution of the United Kingdom’s MAP inventory Pre-2016 cases



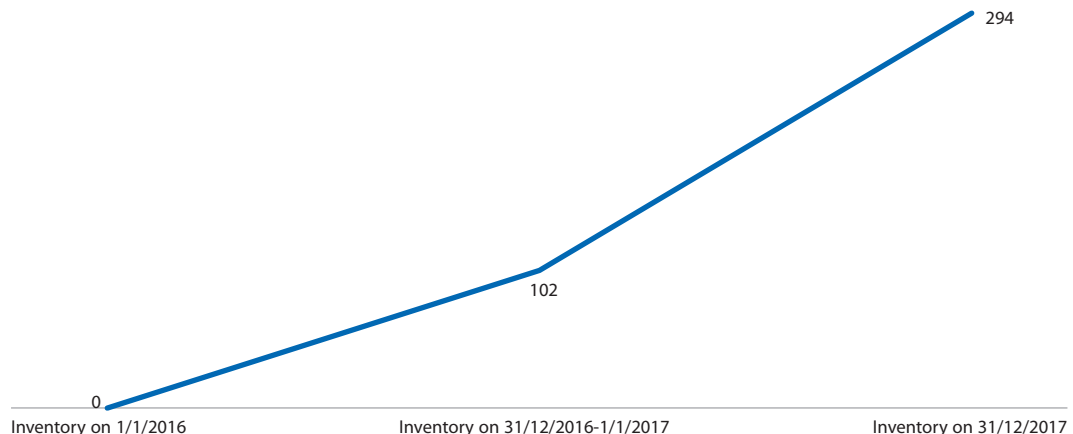
178. At the beginning of the Statistics Reporting Period, the United Kingdom’s MAP inventory of pre-2016 MAP cases consisted of 262 cases, 183 of which were attribution/allocation cases and 79 other cases. At the end of the Statistics Reporting Period the total inventory of pre-2016 cases had decreased to 163 cases, consisting of 110 attribution/allocation cases and 53 other cases. The decrease in the number of pre-2016 MAP cases is shown in the table below.

	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	-19%	-26%	-40%
Other cases	-14%	-22%	-33%

*Post-2015 cases*

179. The following graph shows the evolution of the United Kingdom’s post-2015 MAP cases over the Statistics Reporting Period.

Figure C.4. Evolution of the United Kingdom’s MAP inventory Post-2015 cases



180. In total, 459 MAP cases started during the Statistics Reporting Period, 174 of which concerned attribution/allocation cases and 285 other cases. At the end of this period the total number of post-2015 cases in the inventory was 294 cases, consisting of 142 attribution/allocation cases and 152 other cases. Conclusively, the United Kingdom closed 165 post-2015 cases during the Statistics Reporting Period, 32 of them being attribution/allocation cases and 133 other cases. The total number of closed cases represent 36% of the total number of post-2015 cases that started during the Statistics Reporting Period.

181. 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.

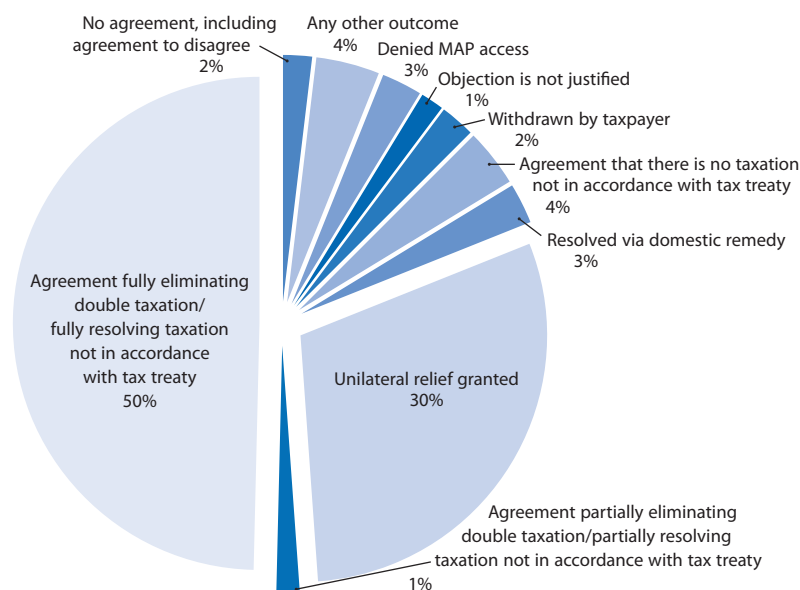
	% of cases closed in 2016 compared to cases started in 2016	% of cases closed in 2017 compared to cases started in 2017	Cumulative % of cases closed compared to cases started over the two years (2016+2017)
Attribution/allocation cases	6%	25%	18%
Other cases	18%	53%	47%

### *Overview of cases closed during the Statistics Reporting Period*

#### *Reported outcomes*

182. During the Statistics Reporting Period the United Kingdom in total closed 264 MAP cases for which the following outcomes were reported:

Figure C.5. Cases closed during the Statistics Reporting Period (264 cases)



183. This chart shows that during the Statistics Reporting Period, 131 out of the 264 cases were resolved through an agreement that fully eliminated double taxation or fully resolved taxation not in accordance with the tax treaty.

*Reported outcomes for attribution/allocation cases*

184. In total, 105 attribution/allocation cases were closed during the Statistics Reporting Period. The main reported outcomes for these cases are:

- agreement fully eliminating double taxation/fully resolving taxation not in accordance with the tax treaty (66%)
- any other outcome (9%)
- unilateral relief granted (5%)
- resolved via domestic remedy (5%).

*Reported outcomes for other cases*

185. In total, 159 other cases were closed during the Statistics Reporting Period. The main reported outcomes for these cases are:

- agreement fully eliminating double taxation/fully resolving taxation not in accordance with the tax treaty (39%)
- unilateral relief granted (47%)
- any other outcome (9%).

*Average timeframe needed to resolve MAP cases**All cases closed during the Statistics Reporting Period*

186. The average time needed to close MAP cases during the Statistics Reporting Period was 15.95 months. This average can be broken down as follows:

	Number of cases	Start date to End date (in months)
Attribution/Allocation cases	105	25.31
Other cases	159	9.77
All cases	264	15.95

*Pre-2016 cases*

187. For pre-2016 cases the United Kingdom reported that on average it needed 36.25 months to close 73 attribution/allocation cases and 43.95 months to close 26 other cases. This resulted in an average time needed of 36.25 months to close 99 pre-2016 cases. For the purpose of computing the average time needed to resolve pre-2016 cases, the United Kingdom used:

- *start date*: the date when the MAP request was received
- *end date*: the date the competent authorities concerned reached a formal agreement. Where competent authorities require taxpayers to confirm their acceptance of the agreement reached, the end date is computed as the date the competent authorities have received this confirmation.

*Post-2015 cases*

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

189. For post-2015 cases, the United Kingdom reported that on average it needed 6.61 months to close 32 attribution/allocation cases and 3.09 months to close 165 other cases. This resulted in an average time needed of 3.77 months to close 15 post-2015 cases.

### *Peer input*

190. All peers that provided input on the United Kingdom’s compliance with the minimum standard report a good working relationship with the competent authority of the United Kingdom, which is further discussed under element C.3 below. This concerns both jurisdictions that have a large MAP caseload and also jurisdictions with a relatively modest MAP caseload with the United Kingdom. Peers reported that contacts with the competent authority of the United Kingdom are easy and that it is solution-oriented. Peers further indicated that cases are generally resolved within a reasonable period, although not all cases are resolved within the targeted 24-month period, particularly due to the nature of the case, for example relating to the oil and gas sector.

### *Recent developments*

191. Further to the above, in the stage 1 peer review report the United Kingdom was under element C.2 recommended to seek to resolve the remaining 86% of its post-2015 MAP cases that were pending on 31 December 2016 (105 cases), such within a timeframe that results in an average timeframe of 24 months for all post-2015 cases. With respect to the recommendation, the United Kingdom reported that its competent authority has reviewed all its pending MAP cases in its inventory and applied additional resources to those cases for which such resources were expected to expedite their resolution. The review, however, learned that the resolution of these cases could not be expedited at the level of the HMRC due to the other competent authority concerned had to take specific action to accelerate their resolution. For these, the United Kingdom’s competent authority has requested the treaty partners to provide the outstanding information as soon as possible and, where possible, to agree on a timetable to ensure that cases are resolved without undue delay. Furthermore, as will be described under element C.3, the United Kingdom also hired additional personnel to handle MAP cases, which have resulted in an increase in the number of closed MAP cases,

192. As follows from the MAP statistics discussed above, the United Kingdom has during 2016 and 2017 closed its MAP cases within the pursued average of 24 months. In 2016 it closed 14% of the post-2015 cases started in that year. By the end of 2017, the United Kingdom closed in total 36% of the post-2015 cases that started in 2016 and 2017. However, its MAP inventory has increased by 74% since 1 January 2016. This will be further discussed under element C.3.

193. All peers that provided input during stage 1 stated in stage 2 that the update report provided by the United Kingdom fully reflects their experience with the United Kingdom since 1 January 2017 and/or there are no additions to the previous input given. Specific input on the resolution of MAP cases will be further discussed under element C.3.

### *Anticipated modifications*

194. As will be further discussed under element C.6, the United Kingdom’s tax treaty policy is to include a mandatory and binding arbitration provision in its bilateral tax treaties to provide that treaty-related disputes will be resolved within a specified timeframe and which should globally improve the time needed to settle MAP cases. Apart from that the United Kingdom did not indicate that it anticipates any modifications in relation to element C.2.

### Conclusion

	Areas for improvement	Recommendations
[C.2]	-	-

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

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

195. 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 the United Kingdom's competent authority*

196. Under the tax treaties the United Kingdom has entered into, the competent authority function to handle MAP cases is delegated to the Commissioners for HMRC or their authorised representatives. Within the HMRC, different teams are responsible for handling MAP cases. These are:

- transfer pricing and profit attribution to permanent establishments: CS&TD Business, Assets and International: TP Team
- other CT issues (including corporate residence and withholding tax): CS&TD Business, Assets and International: Tax Treaty Team
- personal tax issues: CS &TD, Business Assets and International: specialised personal tax.

197. The functioning of each team can be explained as follows:

Team	Description
Transfer pricing and profit attribution to permanent establishments	This team is responsible for handling MAP cases concerning transfer pricing and profit attribution to permanent establishments and consists of approximately 30 people within HMRC, of which three provide support functions as well as conducting mutual agreement procedures this team also handles APA requests. People working in the team are not fully dedicated to handling MAP cases. Other activities include: (i) developing and maintaining policy relating to transfer pricing and profit attribution to permanent establishments, (ii) conducting policy and governance of the diverted profit tax, (iii) maintaining policy for offshore property developers tax, (iv) providing advice training to international specialists that hold responsibilities for transfer pricing enquiries at the level of taxpayers and (v) participating in the work of the OECD and the EU as well as contributing to the OECD outreach programmes.
Other CT issues (including corporate residence and withholding tax)	The Tax treaty Team consists of twelve people, which generally holds responsibility for developing and maintaining policy (including the negotiating of new and updated tax treaties and protocols in respect of the United Kingdom's tax treaty network). In addition, five members of the team handle MAP cases independently of the members providing policy and technical advice in relation to specific products (e.g. double taxation relief for corporate resident cases). This team is also responsible for rendering tax advice and providing training on tax treaties, participating in the work of the OECD and the EU as well as contributing to the OECD outreach programmes.

Team	Description
Personal taxes	Within the Personal Tax Team, there are four people with responsibility for handling MAP cases. The team also provide advice on the operation of legislation (e.g. advising audit and providing practical evidence of the operation of the rules to policy) to international specialists dealing with questions on the taxation of non-UK residents receiving source income from the United Kingdom or UK-residents receiving foreign source income.

198. The United Kingdom reported that personnel working in the competent authority generally have long experience in dealing with international tax issues. For example, becoming a member of the team that deals with transfer pricing issues requires a proven record of experience with this subject, such as being an auditor. Furthermore, persons that have less experience with international tax issues can work in the competent authority and these persons follow an internal training programme. In addition, new personnel are supervised and trained by experienced colleagues within the United Kingdom competent authority.

199. In terms of funding of its competent authority, other than staff in charge of MAP, the United Kingdom reported that there is sufficient budget available for travelling and conducting face-to-face meetings.

### ***Monitoring mechanism***

200. The United Kingdom reported that its competent authority monitors the MAP caseload, which is an element in requesting for additional resources. Allocating budget to the competent authority function, however, is a matter of policy and providing more resources to the MAP function is not a matter to be decided by the United Kingdom's competent authority.

### ***Recent developments***

201. As part of a wider reorganisation within HMRC in 2017 three main business units were created. One of these business units is the Customer Strategy and Tax Design (CS&TD), which was formed to a large extent from what was the CTIS business unit. The United Kingdom's competent authority was part of the Business International department of CTIS and following the reorganisation is now part of the Business Assets and International department of CS&TD.

202. As was noted in the stage 1 peer review report of the United Kingdom, before the reorganisation, MAP cases were handled by three teams, which were organised as follows:

- transfer pricing and profit attribution to permanent establishments: CTIS Business International TP Team
- corporate residence and withholding tax: CTIS Business International Foreign Profits Team
- personal tax

203. Paragraphs 196 and 197 describe the organisation of the United Kingdom's competent authority after completion of the reorganisation. In this respect, the responsibility for other corporate tax cases is placed in the Tax Treaty team, whereby the number of staff in charge of these MAP cases was increased from two to five persons. Furthermore, the team that handles MAP cases relating to personal taxes is now also placed into CS&TD, whereby the manager of the Tax Treaty team is responsible for this team too. The team, however, remains separated concerning the handling of MAP cases and the number of staff in charge of these cases in both team has not changed.

204. To summarise, the reorganisation within HMRC led to the placing of the competent authority into the CS&TD business unit. The teams in charge of MAP cases remained the same as to the type of case they handle and their operations, whereby in one team the number of employees has increased.

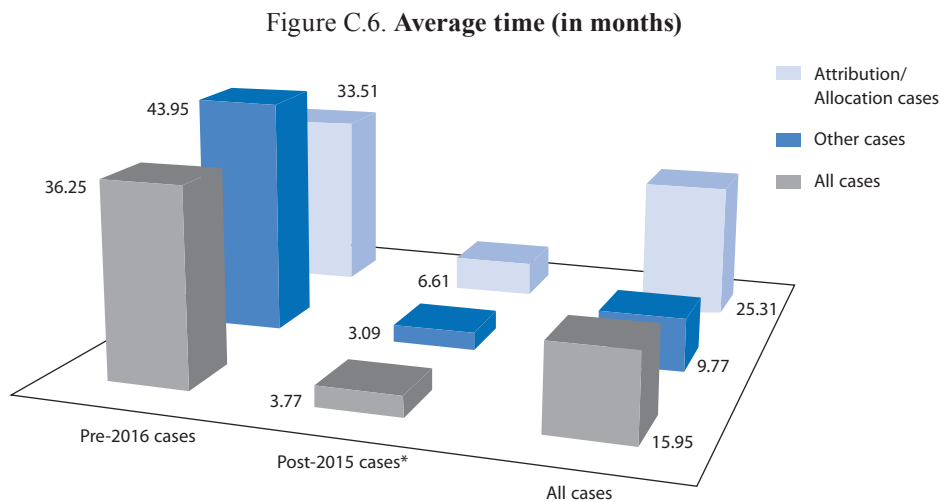
### ***Practical application***

#### *General*

205. The United Kingdom has entered into a competent authority arrangement with the United States specifically relating to the mutual agreement procedure.<sup>6</sup> This arrangement set out certain principles and practices to be followed in presenting and discussing MAP cases.

#### *MAP statistics*

206. As discussed under element C.2, in 2016 and 2017 the United Kingdom closed its MAP cases within the pursued 24-month average, as the average is 15.95 months. However, a variance exists between the average time taken to solve attribution/allocation cases and other cases. This can be shown by the following graph:



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

207. The average time to close MAP cases for 2016 and 2017 can be broken down as follows:

	2016	2017
Attribution/Allocation cases	25.58	25.16
Other cases	32.07	6.56
All cases	27.82	12.61

208. The stage 1 peer review report of the United Kingdom analysed the 2016 statistics and showed an average of 20.51 months. It was on that basis concluded that it closed MAP cases within the pursued average of 24 months. However, there was also a variance identified between attribution/allocation cases and other MAP cases. Attribution/allocation cases took the United Kingdom slightly more than 24 months to resolve them, for which it was concluded that this may indicate that additional resources specifically dedicated to attribution/allocation cases may be necessary to accelerate their resolution.

209. With the final submission of the 2016 statistics, however, the average time to resolve MAP cases was modified. The exact numbers are shown in the above table and are in excess of the pursued 24-month average.<sup>7</sup> The 2017 statistics show that the United Kingdom reduced the average completion time of MAP cases to 12.61 months, resulting in an average for both years of 15.95 months. However, in 2017 the average completion time for attribution/allocation cases was slightly above 24 months and furthermore – as analysed in element C.2 – the MAP inventory of the United Kingdom significantly increased since 1 January 2016. This can be shown as follows:

2016+2017	Opening inventory on 1/1/2016	Cases started	Cases closed	End inventory on 31/12/2016/ Start inventory on 01/01/2017	Cases started	Cases closed	End inventory on 31/12/2017	Evolution of total MAP caseload over the two years (2016+2017)
Attribution/allocation cases	183	64	38	209	110	67	252	38%
Other cases	79	51	20	110	234	139	205	159%
<b>Total</b>	<b>262</b>	<b>115</b>	<b>58</b>	<b>319</b>	<b>344</b>	<b>206</b>	<b>457</b>	<b>74%</b>

210. The increase in the number of MAP cases with 74% (195 cases) indicates that more resources or additional actions may be necessary to cope with this increase and to ensure that for the current and future MAP cases the United Kingdom continues to resolve them within the pursued average of 24 months.

### *Peer and taxpayer input*

#### Period 1 January 2015-31 December 2016 (stage 1)

211. As mentioned under element C.2, all peers that provided input on their experiences with the United Kingdom in resolving MAP cases, reported having a good working relationship with its competent authority. This concerns both peers that have a large MAP caseload with the United Kingdom and also peers with a relatively modest MAP caseload with the United Kingdom. Furthermore, all peers indicated that the contacts with the United Kingdom's competent authority are frequent and via different channels, such as written correspondence, telephone and e-mail. Its competent authority is considered easily accessible and no problems were reported as regards contacting the United Kingdom's competent authority. Generally, all available methods of communication are used to resolve MAP cases, and the peers considered the United Kingdom's competent authority as being responsive to communication. Two peers particularly noted that it is easy to identify the officers responsible for handling MAP cases and to find their contact details. In this regard it is noted that the United Kingdom's competent authority periodically provides contact details to the competent authorities of its treaty partners. The relevant contact details are also made available in the United Kingdom's MAP guidance and on its general government website.<sup>8</sup>

212. On the material side of handling MAP cases, all peers reported that the United Kingdom's competent authority is co-operative, constructive and solution-oriented, and also has the intent to resolve cases in a timely, effective and principled manner. This even when from a formal or material perspective differences of views exist on how to resolve a MAP case. Two peers particularly noted that it considers that the United Kingdom has deployed adequate resources to the MAP function, although one peer experienced a postponement of a competent authority meeting was due to budget constraints. The United



Kingdom responded to this input and mentioned that such meeting was not cancelled due to budget constraints. In more detail, the United Kingdom reported that its competent authority organises at regular occasions face-to-face meetings with other competent authorities for settling disputes. The frequency of these meetings is dependent on the MAP caseload with the relevant treaty partner. Apart from that specific criterion, there appears not to be a different attitude towards handling MAP cases for different treaty partners in relation to organising face-to-face meetings.

213. Furthermore, one peer indicated that the personnel dealing with MAP in the United Kingdom is well-trained to handle MAP cases. It was also reported that the United Kingdom is willing to discuss cases under the equivalent of Article 25(3) of the OECD Model Tax Convention to solve disputes of a general nature or to avoid them from arising. Another positive element mentioned by peers is that HMRC is (domestically) promoting the use of alternative dispute resolution mechanisms, such as mediation, to achieve that there is a better understanding between taxpayers and HMRC during the audit process. This peer noted that such practice may also be helpful to avoid disputes from arising.

214. Peers generally reported no items for improvement regarding providing adequate resources for the MAP function. One peer, however, suggested that there could be an increased communication on the state of play of the MAP caseload generally to enhance the ability of the competent authorities to monitor and manage their MAP caseload. Another peer suggested that for non-attribution/allocation cases it may be helpful to utilise electronic means of communication, instead of written communication in the form of letters, for more routine types of communication such as notifications. This peer also suggested that time frames for some cases could be more closely monitored and controlled. In relation to available resources in the United Kingdom's competent authority, this peer in addition suggested to keep as much as stability in the key staff, as there in this peer's view appears to be a frequent movement of personnel, which may in some cases cause delay.

215. Taxpayers reported that the United Kingdom encouraged them to participate in the process, such as substantiating positions with facts and figures as well as providing views on how the case should be resolved.<sup>9</sup> Taxpayers also reported that the United Kingdom promotes open relationships with them prior to and during the MAP process. Similarly to peers, taxpayers also noted that resources in the United Kingdom are generally adequate to perform the MAP function.

#### Period 1 January 2017-31 December 2017 (stage 2)

216. Most peers that provided input during stage 1 stated in stage 2 that the update report provided by the United Kingdom fully reflects their experience with the United Kingdom since 1 January 2017 and/or there are no additions to the previous input given. Seven peers provided specific input on their experiences with the United Kingdom concerning the resolution of MAP cases since that date, while an eighth peer only mentioned that it has one open case with the United Kingdom in its inventory that was initiated after 1 January 2017 and is still pending.

217. One of the seven peers mentioned that its experiences with the United Kingdom since 1 January 2017 has been positive, thereby highlighting the United Kingdom's competent authority constructive and proactive engagement to seek timely resolution of MAP cases. This peer also mentioned that in its experiences, the United Kingdom has sufficient resources to manage the competent authority function. This input was similar to the views of another peer, who mentioned that since 1 January 2017 it resolved three MAP cases with the United Kingdom, all within 24 months, thereby noting that it did not see any concerns with the

adequacy of the resources for the MAP function of the United Kingdom. Two other peers also specified the number of MAP cases they resolved with the United Kingdom since 1 January 2017, one of them mentioned having resolved nine attribution/allocation cases and two other cases. It also mentioned that the current pending MAP cases are progressing in due form. The other peer mentioned that it has successfully negotiated approximately 10 MAP cases since 1 January 2017 with the United Kingdom and that it continues to have a good working relationship with its competent authority, whereby face-to-face meetings were scheduled in 2017 and 2018 and frequent communications were conducted via telephone and email.

218. Further to the above, another peer mentioned that since 1 January 2017 its competent authority had two face-to-face meetings with the United Kingdom’s competent authority, in which a certain number of MAP cases were discussed and closed with an agreement. In addition to these meetings, the peer reported that the respective competent authorities are in constant contact with each other by email and conference calls, *inter alia* to prepare for coming meetings. The peer concluded that it is confident that following the various steps taken by their competent authorities the average timeframe for resolving MAP cases will be improved.

219. In addition, one peer stated that it has a strong MAP relationship with the United Kingdom. It particularly valued the high volume of communications via (encrypted) emails, teleconferencing and face-to-face meetings, which in its view helps to achieve a timely resolution of MAP cases. The peer further stated that the United Kingdom constructively engages via the MAP framework (and related forum meetings) to assist in resolving potential sensitive disputes and to shorten average completion times. It also mentioned that it considered its personnel well-trained to handle MAP cases, as also appreciating and sharing their pragmatic orientation to resolve such cases.

220. Lastly, one peer provided different input compared to the other peers, thereby specifying that it encountered temporary communication difficulties. The peer indicated that these difficulties may have been due to the departure of the head of the United Kingdom’s competent authority in May 2017. In a response, the United Kingdom acknowledged that there were some temporary communication issues with this peer, indeed due to a staff member leaving the United Kingdom’s competent authority team. The United Kingdom specified that these issues were resolved with the appointment of a new staff member to hold responsibility for handling MAP cases with the peer.

### ***Anticipated modifications***

221. The United Kingdom did not indicate that it anticipates any modifications in relation to element C.3.

### ***Conclusion***

	<b>Areas for improvement</b>	<b>Recommendations</b>
[C.3]	The MAP caseload has increased significantly since 1 January 2016. While additional resources have been allocated to the competent authority function, which resulted in a substantial higher amount of MAP cases resolved, the increase in the MAP inventory indicates that even more resources may be needed to cope with this increase.	The United Kingdom should continue to closely monitor whether the additional resources recently provided to the competent authority function ensure that future MAP cases are resolved in a timely, efficient and effective manner, particularly to cope with the significant increase in the number of other MAP cases. It could also consider devoting additional resources to handle attribution/allocation cases to accelerate their resolution to be within the pursued average of 24-months.

#### [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.

222. 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 at issue and any policy consideration, contributes to a principled and consistent approach to MAP cases.

#### *Functioning of staff in charge of MAP*

223. Following the description included in paragraph 197 on the organisation and tasks of the teams that within HMRC are responsible for handling MAP cases, the operation of these teams specifically relating to MAP is as follows:

<b>Assignment of MAP cases to staff</b>
In the United Kingdom a MAP request is assigned to a member of the relevant team, depending on the items included in the request. For straightforward cases, MAP cases can be handled by a member of the team that is not a delegated competent authority, but this is always under the supervision of the delegated competent authority. More complex cases are always handled only by the delegated competent authority, possibly with support from other team members.
<b>Handling of MAP cases</b>
If the MAP request is dealt with in the bilateral phase of the mutual agreement procedure, it is only the delegated competent authority that holds responsibility for preparing and exchanging position papers as well as engaging in negotiations with the other involved competent authority for reaching an agreement.
<b>Resolution of MAP cases</b>
The manner in which negotiated MAP agreements are authorised deviates per the specific team handling MAP cases. This concerns: <ol style="list-style-type: none"> <li>a. <i>Transfer pricing and profit attribution to permanent establishments</i>: all potential MAP agreements reached are referred to a second competent authority for authorisation, based on a summary of the case and a settlement proposal.</li> <li>b. <i>Corporate residence, withholding tax and personal taxes</i>:               <ul style="list-style-type: none"> <li>• Corporate residence and withholding tax: persons handling MAP cases, not specifically the delegated competent authority, have autonomy to enter into MAP agreements. The head of this team is the delegated competent authority, which for larger/complex cases authorises MAP agreements and is informed on other MAP agreements that concern straightforward/less complex cases.</li> <li>• Personal taxes: straightforward cases may be handled by members of the team, not specifically the delegated competent authority. However, any MAP agreement reached is only negotiated and agreed by the delegated competent authority. Other team members may assist the delegated competent authority, but the latter always make the decision on entering into MAP agreements. For more complex cases additional governance rules are introduced. The delegated competent authority assigns these cases to a senior colleague working in the team, which holds responsibility for ensuring consistency in handling MAP cases that concern cases relating to individuals. Also the delegated competent authority that negotiates cases and enters into MAP agreements in relation to these cases.</li> </ul> </li> </ol>

224. The United Kingdom reported that there is no legal framework or guidance on the functioning of its competent authority. This functioning directly follows from tax treaties that assign competence to the competent authority for handling MAP cases. The analysis of element C.3 points out that personnel that are the designated competent authority are part of teams that, next to handling MAP cases and requests for APAs, are also responsible for developing and maintaining policy relating to international tax issues.

225. In practice, the United Kingdom reported its competent authority operates independently and has full authority to resolve MAP cases. There is neither a (formal) system in place requiring the competent authority to ask tax administration personnel directly involved in the adjustment at issue for approval of any MAP agreements nor is the process for negotiating MAP agreements influenced by policy considerations. All three teams that are responsible for handling MAP cases have a proper system in place to authorise negotiated MAP agreements, which facilitates a consistent and principled resolution of MAP cases.

### ***Recent developments***

226. There are no recent developments with respect to element C.4.

### ***Practical application***

#### *Period 1 January 2015-31 December 2016 (stage 1)*

227. Peers that provided input generally reported no impediments by the United Kingdom to perform its MAP function absent from approval or the direction of the tax administration personnel who made the adjustments at issue or being influenced by considerations of the policy. Two peers specifically mentioned that they are not being aware that staff in charge of the MAP in the United Kingdom is dependent on the approval of the tax authorities of MAP agreements. In addition, taxpayers reported that they consider staff in charge of the MAP in the United Kingdom as being empowered to make decisions and to function independently.

#### *Period 1 January 2017-31 August 2018 (stage 2)*

228. All peers that provided input during stage 1 stated in stage 2 that the update report provided by the United Kingdom fully reflects their experience with the United Kingdom since 1 January 2017 and/or there are no additions to the previous input given. One of these peers added that in its experience the United Kingdom's competent authority is and has acted independently of the tax administration personnel that made the adjustments under discussion in MAP, as also that they are in structure and in form independent from the tax administration personnel.

### ***Anticipated modifications***

229. The United Kingdom did not indicate that it anticipates any modifications in relation to element C.4.

### ***Conclusion***

	Areas for improvement	Recommendations
[C.4]	-	-

### [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.

230. 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 the United Kingdom*

231. The United Kingdom reported that it evaluates the performance of staff in charge of MAP processes by inter alia setting quantitative targets. These concern the time taken by personnel to draw up position papers and respond to request made by taxpayers and treaty partners. In addition, the performance of staff in charge of MAP process is also evaluated through an analysis of the quality of the work undertaken, such as building relationships within the competent authority and with other competent authorities, as also whether the arm's length principle was maintained in a MAP agreement (in principle, not in amount).

232. The Action 14 Final Report (OECD, 2015) includes examples of performance indicators that are considered appropriate. These indicators are shown below and the items that are used by the United Kingdom are checked in the following boxes:

- 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).

233. Further to the above, the United Kingdom reported it does not use performance indicators that are related to the outcome of MAP discussions in terms of the amount of sustained audit adjustments or maintaining tax revenue. In other words, in the United Kingdom the specific material outcome of MAP discussions is not a criterion to evaluate performance of staff in charge of MAP. In addition, the United Kingdom reported it does not have a system in place whereby the remuneration of staff in charge of MAP is based on the (joint) performance of this staff. The United Kingdom monitors the average time for resolving MAP cases and it also monitors which cases adjustments by another jurisdiction were accepted or rejected and for which cases adjustments imposed by the United Kingdom were maintained or withdrawn as the outcome of MAP discussions. This monitoring, however, is not an element in evaluating the performance of staff in charge of MAP.

#### *Recent developments*

234. There are no recent developments with respect to element C.5.

### ***Practical application***

#### *Period 1 January 2015-31 December 2016 (stage 1)*

235. Peers generally provided no specific input relating to this element of the minimum standard. Two peers particularly noted that they are not aware of the use of performance indicators in the United Kingdom that are based on the amount of sustained audit adjustments or maintaining a certain amount of tax revenue. As discussed under element C.3, all peers reported that the United Kingdom’s competent authority is co-operative, constructive and solution-oriented and also has the intent to resolve cases in a timely, effective and principled manner.

#### *Period 1 January 2017-31 August 2018 (stage 2)*

236. All peers that provided input during stage 1 stated in stage 2 that the update report provided by the United Kingdom fully reflects their experience with the United Kingdom since 1 January 2017 and/or there are no additions to the previous input given.

### ***Anticipated modifications***

237. The United Kingdom did not indicate that it anticipates any modifications in relation to element C.5.

### ***Conclusion***

	Areas for improvement	Recommendations
[C.5]	-	-

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

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

238. 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***

239. The United Kingdom reported that it has no domestic law limitations for including MAP arbitration in its tax treaties. The inclusion of MAP arbitration is part of its tax treaty policy, which is also clarified in paragraph 20 of its MAP guidance that specifies the availability of arbitration under tax treaties. Also section 423080 of its International Manual on transfer pricing and the mutual agreement procedure reflects that the United Kingdom is in favour of using arbitration to eliminate double taxation in cases where the competent authorities were unable to reach an agreement and also its policy is to include in its tax treaties an arbitration clause modelled after Article 25(5) of the OECD Model Tax Convention.

240. In addition, the United Kingdom is a signatory to the EU Arbitration Convention and has adopted the Council Directive (EU) 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the European Union. This directive needs to be implemented in the United Kingdom's domestic legislation as per 1 July 2019.

### ***Recent developments***

241. Since 1 January 2017 the United Kingdom signed new treaties with six treaty partners, four of which concern the replacement of an existing tax treaty and one concerns a treaty partner for which the United Kingdom previously continued to apply the treaty with the former USSR. The sixth treaty is with a treaty partner for which currently no treaty is in existence. The United Kingdom also signed three amending protocols to existing treaties. Five of the six newly signed treaties and two of the three amending protocols contain an arbitration provision that is modelled after Article 25(5) of the OECD Model Tax Convention. These treaties are included in the specification below.

242. Furthermore, the United Kingdom signed the Multilateral Instrument and has deposited its instrument of ratification on 29 June 2018. The Multilateral Instrument has for the United Kingdom entered into force on 1 October 2018. With the signing of that instrument, the United Kingdom also opted for part VI, which includes a mandatory and binding arbitration provision. The effects of this opting in is also further described below.

### ***Practical application***

243. The United Kingdom has incorporated an arbitration clause in 28 tax treaties as a final stage to the MAP. These clauses are as follows:

- 27 treaties contain an arbitration clause that is based on Article 25(5) of the OECD Model Tax Convention. In a number of these treaties deviations from this provisions were agreed. In ten treaties is the arbitration procedure not available for MAP cases relating to double residence status of corporate taxpayers and in one treaty arbitration is available for specific pre-determined cases only. Furthermore, in six treaties the two-year period for MAP is replaced with a three-year period, and in two treaties arbitration is not available if the case is dealt with under the EU Arbitration Convention.
- One treaty provides for a voluntary and binding arbitration procedure.

244. With respect to the 27 arbitration provisions mentioned above, the United Kingdom entered into a competent authority agreement with Germany and the Netherlands to detail the rules to be applied during the arbitration procedure.<sup>10</sup> It also entered into an exchange of notes with Canada to detail such rules, which entered into force in 2017.<sup>11</sup>

245. Furthermore, with respect to the effect of part VI of the Multilateral Instrument on the United Kingdom's tax treaties, there are next to the United Kingdom in total 28 signatories to this instrument that also opted for part VI. Concerning these 28 signatories, the United Kingdom listed 22 as a covered tax agreement under the Multilateral Instrument and all of them also listed their treaty with the United Kingdom under that instrument. Of these 22 treaty partners, six have already deposited their instrument of ratification. For these six treaties, the United Kingdom has already included an arbitration provision in three tax treaties. With respect to these tax treaties, part VI will not apply for one treaty and will replace the existing treaty provision in two treaties. For the three remaining of the six treaties, part VI will apply and introduce such a provision in these treaties.<sup>12</sup>

246. For the remaining 16 treaties for which the treaty partner has not yet ratified the Multilateral Instrument, the United Kingdom has already included an arbitration provision in five tax treaties. For one of these five tax treaties the United Kingdom reported it expects that part VI of the Multilateral Instrument will replace the existing arbitration provision. For the 11 tax treaties that do not contain an arbitration provision, the United Kingdom reported it expects that part VI will introduce a mandatory and binding arbitration procedure in these treaties.

### *Anticipated modifications*

247. The United Kingdom did not indicate that it anticipates any modifications in relation to element C.6.

### *Conclusion*

	Areas for improvement	Recommendations
[C.6]	-	-

## Notes

1. These 115 treaties include the treaty with former Czechoslovakia that the United Kingdom continues to apply to the Czech Republic and the Slovak Republic and the treaty with former Yugoslavia that the United Kingdom continues to apply to Bosnia and Herzegovina, Montenegro and Serbia.
2. Available at: [www.oecd.org/tax/dispute/mutual-agreement-procedure-statistics.htm](http://www.oecd.org/tax/dispute/mutual-agreement-procedure-statistics.htm). These statistics are up to and include fiscal year 2017.
3. Available at <https://www.gov.uk/government/publications/transfer-pricing-and-diverted-profits-tax-statistics-to-2017-to-2018> and [http://ec.europa.eu/taxation\\_customs/business/company-tax/transfer-pricing-eu-context/joint-transfer-pricing-forum\\_en](http://ec.europa.eu/taxation_customs/business/company-tax/transfer-pricing-eu-context/joint-transfer-pricing-forum_en). The statistics made available on the website of the United Kingdom are for fiscal years 2017-18 (ending on 31 March 2018). The statistics made available on the website of the EU Joint Transfer Pricing forum are up to and include fiscal year 2017.
4. For post-2015 cases, if the number of MAP cases in the United Kingdom’s inventory at the beginning of the Reporting Period plus the number of MAP cases started during the Reporting Period was more than five, the United Kingdom reports its MAP caseload on a jurisdiction-by-jurisdiction basis. This rule applies for each type of cases (attribution/allocation cases and other cases).
5. For pre-2016 and post-2015 cases the United Kingdom 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 defines such case as: “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”.



6. See Administrative Arrangements for the Implementation of the Mutual Agreement Procedure (Article 25) of the Convention Between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the United States of America for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and Capital Gains (signed on 31 December 1975, as amended by Protocols). Available at: [www.irs.gov/pub/irs-news/ir-00-79.pdf](http://www.irs.gov/pub/irs-news/ir-00-79.pdf).
7. The initial reported MAP statistics by the United Kingdom for 2016 showed an average time to close MAP cases of 20.51 months. This concerned an average of 25.42 months for attribution/allocation cases and 12.37 months for other cases.
8. Available at: [www.gov.uk/guidance/double-taxation-objecting-if-your-company-isnt-being-taxed-correctly#further-information](http://www.gov.uk/guidance/double-taxation-objecting-if-your-company-isnt-being-taxed-correctly#further-information).
9. In section 423050 of its International Manual on transfer pricing and the mutual agreement procedure, the United Kingdom sets out the role of taxpayers in the MAP process. While the taxpayer is not a formal party to the process, the competent authorities may invite them to provide input during the process, such as presenting additional information or provide a clarification to assist the competent authorities in developing a common understanding of the facts of the case under review.
10. The mutual agreement with Germany is available at: [www.gov.uk/government/publications/germany-tax-treaties](http://www.gov.uk/government/publications/germany-tax-treaties).
11. These exchange of notes can be found at [www.fin.gc.ca/treaties-conventions/uk-ru-1-eng.asp](http://www.fin.gc.ca/treaties-conventions/uk-ru-1-eng.asp) and information about its entry into force can be found at <https://www.fin.gc.ca/treaties-conventions/notices/uk-ru-1-entry-entree-eng.asp>.
12. Annex A reflects the effect of part VI of the Multilateral Instrument for these six treaties.

## *References*

- OECD (2017), *Model Tax Convention on Income and on Capital 2017 (Full Version)*, OECD Publishing, Paris, <https://doi.org/10.1787/g2g972ee-en>.
- OECD (2015), *Making Dispute Resolution Mechanisms More Effective, Action 14 – 2015 Final Report*, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris, <https://dx.doi.org/10.1787/9789264241633-en>.

## *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.

248. 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*

249. Under the requirements that the below described conditions are met, the United Kingdom reported that all MAP agreements reached are implemented notwithstanding domestic statute of limitations.

250. When a MAP agreement is reached, the United Kingdom’s competent authority will inform taxpayers of the outcome, whereby they have to decide to either reject or to accept this agreement. In cases where the MAP agreement is rejected, taxpayers have the option of pursuing domestic remedies if still available. If taxpayers accept the agreement reached, they have to file a claim for relief of double taxation. This applies both for agreements reached as the result of the MAP and also for any agreements reached following the decision of an arbitration panel as a final stage to the MAP process.

251. Pursuant to section 124 of the Tax International and Other Provisions Act 2010 (“**TIOPA 2010**”) the United Kingdom waives domestic time limits if a case is dealt with in MAP. This waiver allows the actual implementation of MAP agreements once reached and prevents domestic time limits from impeding the implementation of such agreements. In straightforward cases, where the implementation of a MAP agreement only requires the deduction of taxable income or the increase of losses carried-forward, no further action by taxpayers is necessary for the MAP agreement to be implemented, once accepted by them. For non-straightforward cases, the United Kingdom’s domestic legislation, however, requires taxpayers to make a claim for relief following a MAP agreement within a period of 12 months as from the date that agreement is notified to them. The United Kingdom explained that this requirement is *inter alia* put in place because of its system of offsetting losses and group-relief. For example, where a taxpayers prefers to have losses to be carried-back to be set-off against profits of previous fiscal years or prefers that such losses are under the system of group-relief offset against profits of another group company, section 124(4) of TIOPA 2010 replaces domestic available time limits for making claims for relief and subsequently requires taxpayers to make such claim within 12 months as from the date of notification of the MAP agreement. The United Kingdom reported that

this system ensures that taxpayers have the availability to inform the United Kingdom's competent authority on how they prefer to have losses offset or to what entity with the group company losses should be allocated.

252. For agreements reached under the EU Arbitration Convention, the United Kingdom reported that the system for implementing MAP agreements is slightly different, as domestic time limits for granting relief of double taxations do not apply. In other words, agreements reached under the EU Arbitration Convention are – upon acceptance by taxpayers – always implemented, without requiring taxpayers to submit a request for relief within a certain timeframe. This is specified in section 127(5) of TIOPA 2010, which stipulates:

An enactment which imposes deadlines for the making of claims for relief under any provision of the Tax Acts does not apply to a claim made in pursuance of a Convention determination.

253. Paragraphs 14-19 of the United Kingdom's MAP guidance further details the process of implementing MAP agreements and the rights and role of taxpayers, as outlined above. Also the International Manual on transfer pricing and the mutual agreement procedure includes in section 423060 information on the process of implementing MAP agreements and on how relief from double taxation is granted in practice. This is dependent on the facts and circumstances of each individual case, but this is either by allowing a deduction against the taxable profit or by granting a tax credit. If a MAP agreement is reached and accepted by the taxpayer, it is invited by the United Kingdom's competent authority to submit a revised computation of the taxable income that reflects the agreed relief. Section 423060 of the International Manual specifically addresses that the sole possibility to obtain relief from double taxation is through the MAP. Taxpayers are, either through a self-assessment or following a foreign-initiated adjustment, not allowed to adjust their taxable income in their tax returns so as to obtain relief from double taxation.

254. The United Kingdom further reported that it monitors the actual implementation of all MAP agreements. For MAP cases that concern large multinational enterprises, a customer compliance manager of HMRC monitors the implementation. For small multinational enterprises, the implementation of MAP agreements is performed by a processing officer within HMRC. As these officers may have little experience with MAP agreements, the United Kingdom reported its competent authority provides advice and assistance to the officers responsible for implementing MAP agreements. This to ensure that all MAP agreements are effectively implemented. In relation hereto, the United Kingdom has established a central point of contact.

### ***Recent developments***

255. There are no recent developments with respect to element D.1.

### ***Practical application***

#### *Period 1 January 2015-31 December 2016 (stage 1)*

256. The United Kingdom reported that 17 MAP agreements have not been implemented in the period 1 January 2015-31 December 2016. This concerns 14 agreements reached in 2015 and three in 2016. Reasons for not implementing were because taxpayers either did not request for relief within the required 12 months or did not accept the MAP agreement.

257. All peers that provided input in general reported not being aware of any impediments to the implementation of MAP agreements in the United Kingdom in the period 1 January 2015-31 December 2016. One peer noted that in its jurisdiction the competent authority requires the taxpayer's acceptance of a MAP agreement as a prerequisite for implementation (along with waiving domestic appeals procedures), for which a parallel process appeared not to be applicable in the United Kingdom. In its cases with the United Kingdom this caused problems/delays regarding implementation of MAP agreements. As described above, the United Kingdom, however, has in place a procedure whereby implementation of MAP agreements is dependent on the taxpayer's filing of a claim, which would show its acceptance of such agreement.

*Period 1 January 2017-31 August 2018 (stage 2)*

258. The United Kingdom reported that all MAP agreements that were reached on or after 1 January 2017, once accepted by taxpayers, have been (or will be) implemented and that there were no cases where such agreements were not implemented.

259. All peers that provided input during stage 1 stated in stage 2 that the update report provided by the United Kingdom fully reflects their experience with the United Kingdom since 1 January 2017 and/or there are no additions to the previous input given. One peer specified that it has not received any feedback from taxpayers regarding issues with implementation of MAP agreements by the United Kingdom since 1 January 2017. Three other peers further specified that they were not aware of any MAP agreements that were not implemented at the level of the United Kingdom.

***Anticipated modifications***

260. The United Kingdom did not indicate that it anticipates any modifications in relation to element D.1.

***Conclusion***

	Areas for improvement	Recommendations
[D.1]	-	-

**[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.

261. 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***

262. The United Kingdom reported that it has in its domestic legislation and/or administrative framework no timeframe for implementation of mutual agreements reached. This regards both the situation in which the MAP agreement leads to additional tax to be paid or to a refund of tax in the United Kingdom. Furthermore, its MAP guidance does not include information on the timeframe for implementing MAP agreements.

***Recent developments***

263. There are no recent developments with respect to element D.2.

***Practical application******Period 1 January 2015-31 December 2016 (stage 1)***

264. The United Kingdom reported that generally all MAP agreements reached in the period 1 January 2015-31 December 2016 were implemented on a timely basis.

265. All peers that provided input reported not being aware of any impediments in the period 1 January 2015-31 December 2016 concerning the implementation of MAP agreements reached in the United Kingdom on a timely basis. One peer reported that to its knowledge all MAP agreements with the United Kingdom have been implemented correctly and timely. However, this peer also reported that in one MAP case the agreement reached is still to be implemented, despite the fact that the agreement was reached a year ago. The reason cited for this delay is that the taxpayer concerned is in doubt on the tax implications of the MAP agreement to the tax position of its permanent establishment. Other difficulties were not reported, but in the particular case it was not due to (in)actions by the competent authority of the United Kingdom that the MAP agreement was not implemented on a timely basis.

***Period 1 January 2017-31 August 2018 (stage 2)***

266. The United Kingdom reported that generally all MAP agreements reached after 1 January 2017 were implemented on a timely basis. In two instances there has been a delay in the implementation of such agreements, due to the fact that the internal rules for implementation were not fully followed. In these cases instructions were sent to an internal mailbox, which were not further dealt with in a timely fashion. To avoid that for future MAP agreements delays may occur with respect to the implementation process, the United Kingdom reported that it has reviewed and updated the process, such by naming a point of contact that is responsible for ensuring that the instructions for implementation of MAP agreements are passed on to the relevant teams. Furthermore, the internal guidance has been updated to reflect the change in the process.

267. All peers that provided input during stage 1 stated in stage 2 that the update report provided by the United Kingdom fully reflects their experience with the United Kingdom since 1 January 2017 and/or there are no additions to the previous input given. Three of these peers further specified that they were not aware of any delays in the implementation of MAP agreements at the level of the United Kingdom.

***Anticipated modifications***

268. The United Kingdom did not indicate that it anticipates any modifications in relation to element D.2.

### Conclusion

	Areas for improvement	Recommendations
[D.2]	-	-

#### [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.

269. 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, 2017) 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.

#### *Legal framework and current situation of the United Kingdom’s tax treaties*

270. As discussed under element D.1, the United Kingdom’s domestic legislation does not include a statute of limitations for implementing MAP agreements.

271. Out of the United Kingdom’s 130 tax treaties, 31 contain a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention that any mutual agreement reached through MAP shall be implemented notwithstanding any time limits in their domestic law.<sup>1</sup>

272. For the remaining 99 treaties, the following analysis is made:

- In 78 tax treaties the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention is not contained.<sup>2</sup> These 78 treaties include the 15 treaties mentioned in the Introduction that do not provide for a MAP article. Further, none of these 78 tax treaties the United Kingdom include the alternative provisions for Article 9(1) and Article 7(2), setting a time limit for making transfer pricing adjustments.
- In 21 tax treaties an equivalent provision to Article 25(2), second sentence, of the OECD Model Tax Convention is contained, but this provision is supplemented with wording that may limit the implementation of MAP agreements due to constraints in the domestic legislation of the contracting states (e.g. “except such limitations as apply for the purposes of giving effect to such an agreement”). Although the United Kingdom uses no statute of limitations for implementing MAP agreements, such statute of limitation may be in existence in the domestic legislation of the treaty partner. These 21 treaties therefore are considered not having the full equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention.

273. Several peers reported that the provisions of their tax treaty with the United Kingdom do not meet all the requirements of the relevant elements of the Action 14 Minimum Standard and that they envisage implementing these elements by signing the Multilateral Instrument.

## *Recent developments*

### *Bilateral modifications*

274. The United Kingdom signed new treaties with six treaty partners, four of which concern the replacement of an existing tax treaty and one concerns a treaty partner for which the United Kingdom previously continued to apply the treaty with the former USSR. The sixth treaty is with a treaty partner with which there is currently no treaty. Of the six treaties, two have already entered into force and for the four remaining treaties, ratification procedures have not been completed by either treaty partner. All six treaties contain a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention, which was not the case for four treaties for which currently a treaty is in force, but was the case for the treaty with the former USSR that the United Kingdom continued to apply to one treaty partner.

275. Furthermore, the United Kingdom also signed three amending protocols to existing treaties, of which two contain a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention. With respect to the third amending protocol, this protocol does not contain such equivalent, which follows from the treaty partner's position as is reflected in its reservation pursuant to Article 16(5)(c)(ii) of the Multilateral Instrument and in the Commentary to Article 25 of the OECD Model Tax Convention. The United Kingdom reported that this treaty partner proposed to include the alternative provisions for Article 9(1) and Article 7(2) in the tax treaty, but that they could not reach an agreement on this subject.

276. The effects of these newly signed treaties and amending protocols have been reflected in the analysis above where they have relevance.

### *Multilateral Instrument*

277. The United Kingdom signed the Multilateral Instrument and has deposited its instrument of ratification on 29 June 2018. The Multilateral Instrument has for the United Kingdom entered into force on 1 October 2018.

278. 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 – 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. 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 contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention. 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 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.

279. In regard of the 99 tax treaties identified above that are considered not to contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention or both alternatives provided for in Articles 9(1) and 7(2), the United Kingdom listed 90 as a covered tax agreements under the Multilateral Instrument and for all of them did it make 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 90 treaty partners, 41 are not a signatory to the Multilateral Instrument, whereas one did not list its treaty with the United Kingdom under that instrument, one made a reservation on the basis of Article 16(5)(a) and two did not make a notification pursuant to Article 16(6)(c)(ii). The remaining 45 treaty partners all made such a notification.<sup>3</sup>

280. Of the last 45 treaty partners mentioned above, six have deposited their instrument of ratification, following which the Multilateral Instrument has entered into force for the treaty between the United Kingdom and these treaty partners. Therefore, at this stage, the Multilateral Instrument has modified six treaties to include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention.<sup>4</sup> For the remaining 39 treaties, the instrument will, upon entry into force for these treaties, modify them to include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention.

#### *Other developments*

281. As is described in the Introduction, for those treaties that are not in line with one or more elements of the Action 14 Minimum Standard and will not be modified by the Multilateral Instrument, the United Kingdom has put in place a plan for bringing these treaties in line with that standard. Concerning the 55 treaties that are not in line with element D.3 and will not be modified by the Multilateral Instrument, the United Kingdom reported that it is currently in negotiations with four jurisdictions and five are included in the list of jurisdictions with which the United Kingdom has MAP cases and for which it will prioritise negotiations with these treaty partners and include them in the negotiation programme for the coming fiscal years. Furthermore, 15 are included in the first batch of treaties for which the United Kingdom will request the relevant treaty partner to negotiate an update to the treaty. In addition, the United Kingdom has already conducted negotiations with one treaty partner to include the equivalent provisions for Article 9(1) and Article 7(2) in its tax treaties, which – as described above – did not lead to an agreement.

#### *Peer input*

282. Of the peers that provided input during stage 2, seven provided input in relation to their tax treaty with the United Kingdom. Of these peers, five provided input in relation element D.3. One of peers mentioned that there has been no contact or action with the United Kingdom to bring their treaty in line with the requirements under the Action 14 Minimum Standard. Furthermore, three peers mentioned that their treaty with the United Kingdom will be modified by the Multilateral Instrument to include Article 25(2), second sentence, of the OECD Model Tax Convention, which conforms with the analysis in this element. Lastly, one peer specified that its treaty with the United Kingdom will not be modified by the Multilateral Instrument, as it is not listed as a covered tax agreement, but that it recently renegotiated this treaty, which will meet the requirements under the Action 14 Minimum Standard.



### *Anticipated modifications*

283. For the remaining 29 treaties that are not in line with element D.3 and will not be modified by the Multilateral Instrument and for which no bilateral negotiations have been conducted, or are envisaged, scheduled or pending, the United Kingdom reported it will approach the treaty partners to bring these treaties in line with element D.3 when the prioritised negotiations as described above have been finalised. Regardless, the United Kingdom reported it will seek to include Article 25(2), second sentence, of the OECD Model Tax Convention in all of its future tax treaties.

### *Conclusion*

	Areas for improvement	Recommendations
[D.3]	<p>99 out of 130 tax treaties contain neither a provision that is equivalent to Article 25(2), second sentence of the OECD Model Tax Convention, nor the alternative provisions in Article 9(1) and Article 7(2). Of those 99 tax treaties:</p> <ul style="list-style-type: none"> <li>• Six have been modified by the Multilateral Instrument to include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention</li> <li>• 39 are expected to be modified by that instrument to include this equivalent</li> <li>• 54 will not be modified by that instrument to include this equivalent. With respect to these 54 treaties: <ul style="list-style-type: none"> <li>- 24 are included in the list of treaties for which negotiations are envisaged, scheduled or pending</li> <li>- For one negotiations have been conducted, which did not result in the inclusion of the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention or the alternative provisions in Article 9(1) and Article 7(2)</li> <li>- For the remaining 29 no actions have been taken or are planned to be taken, but are included in the plan for renegotiations.</li> </ul> </li> </ul>	<p>For the 53 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, and for which no negotiations have been conducted in this respect, the United Kingdom should:</p> <ul style="list-style-type: none"> <li>• Follow-up on its plan to initiate bilateral negotiations or to continue such negotiations if they are pending for 24 of the 53 treaty partners to include the required provision or be willing to accept the inclusion of both alternative provisions</li> <li>• Also request the inclusion of the required provision or be willing to accept the inclusion of both alternative provisions in the remaining 29 treaties in accordance with its plan for renegotiation.</li> </ul>

### Notes

1. In the stage 1 peer review report, reference was made to 26 tax treaties. As will be described under the recent developments section, four treaties that concern the replacement of an existing treaty, one new treaty and two amending protocols have been signed that contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention. Taking these into account, the number of treaties being referred to should be 33. However, following the peer review process of other assessed jurisdictions, two other treaties were also identified that do not contain this equivalent, following which the correct number is 31.
2. These 78 treaties include the treaty with former Czechoslovakia that the United Kingdom continues to apply to the Czech Republic and the Slovak Republic and the treaty with former Yugoslavia that the United Kingdom continues to apply to Bosnia and Herzegovina, Montenegro and Serbia.

3. These 44 treaties include the treaty with former Yugoslavia that the United Kingdom continues to apply to Bosnia and Herzegovina, Montenegro and Serbia, but only as regards Serbia, as Bosnia and Herzegovina and Montenegro are not signatories to the Multilateral Instrument.
4. Ibid.

### *Reference*

OECD (2017), *Model Tax Convention on Income and on Capital 2017 (Full Version)*, OECD Publishing, Paris, <https://doi.org/10.1787/g2g972ee-en>.



## Summary

	Areas for improvement	Recommendations
<b>Part A: Preventing disputes</b>		
[A.1]	<p>15 out of 130 tax treaties do not contain a provision that is equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention. Of these 15 treaties:</p> <ul style="list-style-type: none"> <li>• Three are expected to be modified by the Multilateral Instrument to contain the required provision</li> <li>• 12 will not be modified by that instrument to contain the required provision. With respect to these 12 treaties: <ul style="list-style-type: none"> <li>- Three are included in the list of treaties for which negotiations are envisaged, scheduled or pending</li> <li>- For the remaining nine no actions have been taken or are planned to be taken, but are included in the plan for renegotiations.</li> </ul> </li> </ul>	<p>For the 12 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, the United Kingdom should:</p> <ul style="list-style-type: none"> <li>• Follow-up on its plan to initiate bilateral negotiations or continue such negotiations if they are pending for three treaty partners to include the required provision.</li> <li>• Also request the inclusion of the required provision in the remaining nine treaties in accordance with its plan for renegotiations.</li> </ul>
[A.2]	-	-
<b>Part B: Availability and access to MAP</b>		
[B.1]	<p>16 out of 130 tax treaties do not contain a provision that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention. Of these 16 treaties:</p> <ul style="list-style-type: none"> <li>• Three are expected to be superseded by the Multilateral Instrument to include the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention as amended by the Action 14 final report.</li> <li>• 13 will not be modified or superseded by that instrument to include the required provision. With respect to these 13 treaties: <ul style="list-style-type: none"> <li>- Four are included in the list of treaties for which negotiations are envisaged, scheduled or pending</li> <li>- For the remaining nine no actions have been taken or are planned to be taken, but are included in the plan for renegotiations.</li> </ul> </li> </ul>	<p>For the 13 treaties that will not be modified or superseded by the Multilateral Instrument to include the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention, as it read as amended in the Action 14 final report, the United Kingdom should:</p> <ul style="list-style-type: none"> <li>• Follow-up on its plan to initiate bilateral negotiations or continue such negotiations with respect to the four treaty partners to include the required provision.</li> <li>• Also request the inclusion of the required provision in the remaining nine treaties in accordance with its plan for renegotiations.</li> </ul> <p>In both instances this concerns a provision that is equivalent to Article 25(1), first sentence of the OECD Model Tax Convention either:</p> <ol style="list-style-type: none"> <li>a. As amended in the Action 14 final report; or</li> <li>b. As it read prior to the adoption of the Action 14 final report, thereby including the full sentence of such provision.</li> </ol>
	<p>Where tax treaties do not include a time limit for submission of a MAP request, applicable rules under domestic legislation may lead to a filing period of less than three years as from the first notification of the action resulting in taxation not in accordance with the provisions of a tax treaty.</p>	<p>The United Kingdom should ensure that where its domestic time limits apply for filing of MAP requests, in the absence of a provision in its tax treaties, such time limits do not prevent taxpayers from having access to MAP if a request thereto is made within a period of three years as from the first notification of the action resulting in taxation not in accordance with the provisions of a tax treaty. To mitigate this risk, the United Kingdom could follow its stated intention to update its guidance in accordance with paragraph 55.</p>

	Areas for improvement	Recommendations
[B.2]	-	-
[B.3]	-	-
[B.4]	-	-
[B.5]	-	-
[B.6]	-	-
[B.7]	<p>76 out of 130 tax treaties do not contain a provision that is equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention.</p> <p>Of these 76 treaties, two treaties concern tax treaties with a limited scope of application. With respect to the 74 remaining comprehensive treaties:</p> <ul style="list-style-type: none"> <li>• Five have been modified by the Multilateral Instrument to contain the required provision</li> <li>• 33 are expected to be modified by that instrument to contain the required provision</li> <li>• 36 treaties will not be modified by that instrument. With respect to these 36 treaties: <ul style="list-style-type: none"> <li>- 13 are included in the list of treaties for which negotiations are envisaged, scheduled or pending</li> <li>- For the remaining 23 no actions have been taken or planned to be taken, but are included in the plan for renegotiations.</li> </ul> </li> </ul>	<p>For the 36 comprehensive 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, the United Kingdom should:</p> <ul style="list-style-type: none"> <li>• Follow-up on its plan to initiate bilateral negotiations or to continue such negotiations if they are pending for 13 of the 36 treaty partners to include the required provision</li> <li>• Also request the inclusion of the required provision in the remaining 23 treaties in accordance with its plan for renegotiations.</li> </ul>
[B.8]	-	-
[B.9]	-	-
[B.10]	-	-
<b>Part C: Resolution of MAP cases</b>		
[C.1]	<p>15 out of 130 tax treaties do not contain a provision that is equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention. Of these 15 treaties:</p> <ul style="list-style-type: none"> <li>• Three are expected to be modified by the Multilateral Instrument to contain the required provision</li> <li>• 12 will not be modified by that instrument to contain the required provision. With respect to these 12 treaties: <ul style="list-style-type: none"> <li>- Three are included in the list of treaties for which negotiations are envisaged, scheduled or pending</li> <li>- For the remaining nine no actions have been taken or are planned to be taken, but are included in the plan for renegotiations.</li> </ul> </li> </ul>	<p>For the 12 treaties that will not be amended by the Multilateral Instrument to include the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention, the United Kingdom should:</p> <ul style="list-style-type: none"> <li>• Follow-up on its plan to initiate bilateral negotiations or continue such negotiations if they are pending for three treaty partners to include the required provision.</li> <li>• Also request the inclusion of the required provision in the remaining nine treaties in accordance with its plan for renegotiations.</li> </ul>
[C.2]	-	-
[C.3]	<p>The MAP caseload has increased significantly since 1 January 2016. While additional resources have been allocated to the competent authority function, which resulted in a substantial higher amount of MAP cases resolved, the increase in the MAP inventory indicates that even more resources may be needed to cope with this increase.</p>	<p>The United Kingdom should continue to closely monitor whether the additional resources recently provided to the competent authority function ensure that future MAP cases are resolved in a timely, efficient and effective manner, particularly to cope with the significant increase in the number of other MAP cases. It could also consider devoting additional resources to handle attribution/ allocation cases to accelerate their resolution to be within the pursued average of 24-months.</p>
[C.4]	-	-

	Areas for improvement	Recommendations
[C.5]	-	-
[C.6]	-	-
<b>Part D: Implementation of MAP agreements</b>		
[D.1]	-	-
[D.2]	-	-
[D.3]	<p>99 out of 130 tax treaties contain neither a provision that is equivalent to Article 25(2), second sentence of the OECD Model Tax Convention, nor the alternative provisions in Article 9(1) and Article 7(2). Of those 99 tax treaties:</p> <ul style="list-style-type: none"> <li>• Six have been modified by the Multilateral Instrument to include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention</li> <li>• 39 are expected to be modified by that instrument to include this equivalent</li> <li>• 54 will not be modified by that instrument to include this equivalent. With respect to these 54 treaties: <ul style="list-style-type: none"> <li>- 24 are included in the list of treaties for which negotiations are envisaged, scheduled or pending</li> <li>- For one negotiations have been conducted, which did not result in the inclusion of the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention or the alternative provisions in Article 9(1) and Article 7(2)</li> <li>- For the remaining 29 no actions have been taken or are planned to be taken, but are included in the plan for renegotiations.</li> </ul> </li> </ul>	<p>For the 53 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, and for which no negotiations have been conducted in this respect, the United Kingdom should:</p> <ul style="list-style-type: none"> <li>• Follow-up on its plan to initiate bilateral negotiations or to continue such negotiations if they are pending for 24 of the 53 treaty partners to include the required provision or be willing to accept the inclusion of both alternative provisions</li> <li>• Also request the inclusion of the required provision or be willing to accept the inclusion of both alternative provisions in the remaining 29 treaties in accordance with its plan for renegotiation.</li> </ul>



## Annex A

### Tax treaty network of the United Kingdom

		Article 25(1) of the OECD Model Tax Convention ("MTC")		Article 9(2) of the OECD MTC	Anti-abuse	Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC		Arbitration		
		B.1		B.3	B.4	C.1	D.3	A.1	B.7	C.6		
Column 1	Column 2	Column 3	Column 4		Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	
Treaty partner	DTC in force?	Is Art. 25(1), first sentence included?  If yes, submission to either competent authority (new Art. 25(1), first sentence)	Is Art. 25(1), second sentence included?  If no, please state reasons	Is Art. 9(2) included?	Inclusion 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?	Is Art. 25(2) first sentence included?	Is Art. 25(2) second sentence included?  If no, alternative provision in Art. 7 & 9 OECD MC?	Is Art. 25(3) first sentence included?	Is Art. 25(3) second sentence included?	Inclusion arbitration provision?		
	Y = yes N = signed pending ratification	E = yes, either 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	if ii, specify period	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 = yes N = no	Y = yes i = no, but have Art. 7 equivalent ii = no, but have Art. 9 equivalent iii = no, but have both Art. 7 & 9 equivalent N = no and no equivalent of Art. 7 and 9	Y = yes N = no	Y = yes N = no	Y = yes N = no if yes i-Art. 25(5) ii-mandatory other iii - voluntary iv = MLI arbitrator	
Albania	Y	O	Y	N/A	Y	i	Y	N	Y	Y	Y	i
Algeria	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	i
Antigua and Barbuda	Y	N	iv	No MAP provision	i	i	N	N	N	N	N	N/A



		Article 25(1) of the OECD Model Tax Convention ("MTC")			Article 9(2) of the OECD MTC	Anti-abuse	Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC		Arbitration	
		B.1			B.3	B.4	C.1	D.3	A.1	B.7	C.6	
Column 1	Column 2	Column 3	Column 4		Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	
Treaty partner	DTC in force?	Is Art. 25(1), first sentence included? If yes, submission to either competent authority (new Art. 25(1), first sentence)	Is Art. 25(1), second sentence included? If no, please state reasons		Is Art. 9(2) included?	Inclusion 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?	Is Art. 25(2) first sentence included?	Is Art. 25(2) second sentence included? If no, alternative provision in Art. 7 & 9 OECD MC?	Is Art. 25(3) first sentence included?	Is Art. 25(3) second sentence included?	Inclusion arbitration provision?	
Argentina	Y	O*	i	N/A	Y	i	Y	N*	Y	N*	N	N/A
Armenia	Y	O	Y	N/A	Y	i	Y	N	Y	Y	Y	i
Australia	Y	O*	i	N/A	Y	i	Y	N*	Y	Y	Y***	iv
Austria	Y	O	i	N/A	i	i	Y	N	Y	N	N	N/A
Azerbaijan	Y	O	i	N/A	Y	i	Y	N	Y	N	N	N/A
Bahrain	Y	O	i	N/A	Y	i	Y	N	Y	Y	Y	i
Bangladesh	Y	O	i	N/A	i	i	Y	N	Y	N	N	N/A
Barbados	Y	O*	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Belarus	Y	E	Y	N/A	Y	i	Y	Y	Y	Y	Y	i
Belgium	Y	O*	Y	N/A	i*	i	Y	Y	Y	N*	Y	i
Belize	Y	N**	iv	No MAP provision	i	i	N*	N*	N*	N*	N	N/A
Bolivia	Y	O	i	N/A	Y	i	Y	N	Y	N	N	N/A
Bosnia and Herzegovina	Y	O	i	N/A	i	i	Y	N	Y	N	N	N/A
Botswana	Y	O	i	N/A	Y	i	Y	N	Y	N	N	N/A
British Virgin Islands	Y	O	i	N/A	i	i	Y	N	Y	N	N	N/A
Brunei Darussalam	Y	N	iv	No MAP provision	i	i	N	N	N	N	N	N/A

		Article 25(1) of the OECD Model Tax Convention ("MTC")			Article 9(2) of the OECD MTC	Anti-abuse	Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC		Arbitration	
		B.1			B.3	B.4	C.1	D.3	A.1	B.7	C.6	
Column 1	Column 2	Column 3	Column 4		Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	
Treaty partner	DTC in force?	Is Art. 25(1), first sentence included? If yes, submission to either competent authority (new Art. 25(1), first sentence)	Is Art. 25(1), second sentence included? If no, please state reasons		Is Art. 9(2) included?	Inclusion 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?	Is Art. 25(2) first sentence included?	Is Art. 25(2) second sentence included? If no, alternative provision in Art. 7 & 9 OECD MC?	Is Art. 25(3) first sentence included?	Is Art. 25(3) second sentence included?	Inclusion arbitration provision?	
Bulgaria	Y	O*	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Canada	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	i
Cayman Islands	Y	E	i	N/A	i	i	Y	N	Y	Y	N	N/A
Chile	Y	O	i	N/A	Y	i	Y	N*	Y	N*	N	N/A
China (People's Republic of)	Y	O	i	N/A	Y	i	Y	Y	Y	Y	N	N/A
Colombia	N	E	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Côte d'Ivoire	Y	O*	i	N/A	Y	i	Y	N*	Y	N	N	N/A
Croatia	Y	O	Y	N/A	Y	i	Y	N*	Y	N*	N	N/A
Cyprus <sup>a</sup>	Y	E	Y	N/A	Y	i	Y	Y	Y	Y	Y	i
Czech Republic	Y	O*	i	N/A	i	i	Y	N*	Y	N*	N	N/A
Denmark	Y	O*	i	N/A	i**	i	Y	N*	Y	N*	N	N/A
Egypt	Y	O*	i	N/A	i	i	Y	N*	Y	N*	N	N/A
Estonia	Y	O*	i	N/A	Y	i	Y	N*	Y	N*	N	N/A
Eswatini	Y	O	i	N/A	i	i	Y	N	Y	N	N	N/A
Ethiopia	Y	O	Y	N/A	Y	i	Y	N	Y	Y	N	N/A
Falkland Islands (Malvinas)	Y	O	i	N/A	Y	i	Y	N	Y	N	N	N/A
Faroe Islands	Y	O	i	N/A	Y	i	Y	N	Y	Y	N	N/A
Fiji	Y	O*	i	N/A	i**	i	Y	N*	Y	N*	N	N/A

		Article 25(1) of the OECD Model Tax Convention ("MTC")			Article 9(2) of the OECD MTC	Anti-abuse	Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC		Arbitration	
		B.1			B.3	B.4	C.1	D.3	A.1	B.7	C.6	
Column 1	Column 2	Column 3	Column 4		Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	
Treaty partner	DTC in force?	Is Art. 25(1), first sentence included? If yes, submission to either competent authority (new Art. 25(1), first sentence)	Is Art. 25(1), second sentence included? If no, please state reasons		Is Art. 9(2) included?	Inclusion 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?	Is Art. 25(2) first sentence included?	Is Art. 25(2) second sentence included? If no, alternative provision in Art. 7 & 9 OECD MC?	Is Art. 25(3) first sentence included?	Is Art. 25(3) second sentence included?	Inclusion arbitration provision?	
Finland	Y	O*	i	N/A	Y	i	Y	N*	Y	N*	N	N/A
Former Yugoslav Republic of Macedonia	Y	O	Y	N/A	Y	i	Y	N	Y	Y	N	N/A
France	Y	O*	Y	N/A	Y	i	Y	Y	Y	Y	Y	i
Gambia	Y	O	i	N/A	i	i	Y	N	Y	N*	N	N/A
Georgia	Y	O*	i	N/A	Y	i	Y	N*	Y	Y	N	N/A
Germany	Y	O	Y	N/A	Y	i	Y	N	Y	Y	Y	i
Ghana	Y	O	i	N/A	Y	i	Y	N	Y	N	N	N/A
Greece	Y	N**	iv	No MAP provision	i**	i	N*	N*	N*	N*	N	N/A
Grenada	Y	N	iv	No MAP provision	i	i	N	N	N	N	N	N/A
Guernsey	Y	E	Y	N/A	Y	i	Y	Y	Y	Y	Y	i
Guyana	Y	O	i	N/A	Y	i	Y	N	Y	N	N	N/A
Hong Kong (China)	Y	O*	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Hungary	Y	O	i	N/A	Y	i	Y	N*	Y	Y	N	N/A
Iceland	Y	O*	Y	N/A	Y	i	Y	Y	Y	Y	Y	i
India	Y	O	i	N/A	Y	i	Y	N*	Y	N*	N	N/A

		Article 25(1) of the OECD Model Tax Convention ("MTC")			Article 9(2) of the OECD MTC	Anti-abuse	Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC		Arbitration	
		B.1			B.3	B.4	C.1	D.3	A.1	B.7	C.6	
Column 1	Column 2	Column 3	Column 4		Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	
Treaty partner	DTC in force?	Is Art. 25(1), first sentence included? If yes, submission to either competent authority (new Art. 25(1), first sentence)	Is Art. 25(1), second sentence included? If no, please state reasons		Is Art. 9(2) included?	Inclusion 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?	Is Art. 25(2) first sentence included?	Is Art. 25(2) second sentence included? If no, alternative provision in Art. 7 & 9 OECD MC?	Is Art. 25(3) first sentence included?	Is Art. 25(3) second sentence included?	Inclusion arbitration provision?	
Indonesia	Y	O	i	N/A	i	i	Y	N*	Y	N*	N	N/A
Ireland	Y	E*	i	N/A	Y*	i	Y	Y*	Y	Y*	N	N/A
Isle of Man	Y	E	Y	N/A	Y	i	Y	Y	Y	Y	Y	i
Israel	Y	N	iv	No MAP provision	i	i	N	N	N	N	N	N/A
Italy	Y	N	i	N/A	i**	i	Y	N*	Y	N*	N	N/A
Jamaica	Y	N**	iv	No MAP provision	i*	i	N*	N*	N*	N*	N	N/A
Japan	Y	O*	Y	N/A	Y	i	Y	N*	Y	Y	Y**	iv
Jersey	Y	E	Y	N/A	Y	i	Y	Y	Y	Y	Y	i
Jordan	Y	O	i	N/A	Y	i	Y	N	Y	N	N	N/A
Kazakhstan	Y	O	i	N/A	Y	i	Y	N*	Y	N*	N	N/A
Kenya	Y	O	i	N/A	i	i	Y	N	Y	N	N	N/A
Kiribati	Y	N	iv	No MAP provision	i	i	N	N	N	N	N	N/A
Korea	Y	O*	i	N/A	Y	i	Y	N*	Y	N*	N	N/A
Kosovo	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	i
Kuwait	Y	O*	i	N/A	Y	i	Y	N*	Y	N*	N	N/A
Kyrgyzstan	N	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Latvia	Y	O	i	N/A	Y	i	Y	N*	Y	N*	N	N/A

		Article 25(1) of the OECD Model Tax Convention ("MTC")			Article 9(2) of the OECD MTC	Anti-abuse	Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC		Arbitration	
		B.1			B.3	B.4	C.1	D.3	A.1	B.7	C.6	
Column 1	Column 2	Column 3	Column 4		Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	
Treaty partner	DTC in force?	Is Art. 25(1), first sentence included? If yes, submission to either competent authority (new Art. 25(1), first sentence)	Is Art. 25(1), second sentence included? If no, please state reasons		Is Art. 9(2) included?	Inclusion 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?	Is Art. 25(2) first sentence included?	Is Art. 25(2) second sentence included? If no, alternative provision in Art. 7 & 9 OECD MC?	Is Art. 25(3) first sentence included?	Is Art. 25(3) second sentence included?	Inclusion arbitration provision?	
Lesotho	N	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	i
Libya	Y	O	i	N/A	Y	i	Y	Y	Y	Y	N	N/A
Liechtenstein	Y	O*	Y	N/A	Y	i	Y	Y	Y	Y	Y	i
Lithuania	Y	E*	i	N/A	Y	i	Y	Y*	Y	Y*	N	N/A
Luxembourg	Y	O*	i	N/A	i*	i	Y	N	Y	Y	N	N/A
Malawi	Y	N	iv	No MAP provision	i	i	N	N	N	N	N	N/A
Malaysia	Y	O*	i	N/A	Y	i	Y	N*	Y	N*	N	N/A
Malta	Y	O*	i	N/A	Y	i	Y	N*	Y	N*	N	N/A
Mauritius	Y	O*	i	N/A	i**	i	Y	N*	Y	N*	N	N/A
Mexico	Y	O*	i	N/A	Y	i	Y	N	Y	N*	Y	iii
Moldova	Y	O	Y	N/A	Y	i	Y	N	Y	N	N	N/A
Mongolia	Y	O	i	N/A	Y	i	Y	N	Y	N	N	N/A
Montenegro	Y	O	i	N/A	i	i	Y	N	Y	N	N	N/A
Montserrat	Y	O	Y	N/A	i	i	Y	N	Y	Y	N	N/A
Morocco	Y	O	i	N/A	i	i	Y	N	Y	N	N	N/A
Myanmar	Y	N	iv	No MAP provision	i	i	N	N	N	N	N	N/A
Namibia	Y	N	iv	No MAP provision	i	i	N	N	N	N	N	N/A

		Article 25(1) of the OECD Model Tax Convention ("MTC")			Article 9(2) of the OECD MTC	Anti-abuse	Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC		Arbitration	
		B.1			B.3	B.4	C.1	D.3	A.1	B.7	C.6	
Column 1	Column 2	Column 3	Column 4		Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	
Treaty partner	DTC in force?	Is Art. 25(1), first sentence included? If yes, submission to either competent authority (new Art. 25(1), first sentence)	Is Art. 25(1), second sentence included? If no, please state reasons		Is Art. 9(2) included?	Inclusion 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?	Is Art. 25(2) first sentence included?	Is Art. 25(2) second sentence included? If no, alternative provision in Art. 7 & 9 OECD MC?	Is Art. 25(3) first sentence included?	Is Art. 25(3) second sentence included?	Inclusion arbitration provision?	
Netherlands	Y	O*	Y	N/A	Y	i	Y	N*	Y	Y	Y	i
New Zealand	Y	E*	i	N/A	Y*	i	Y	Y*	Y	Y*	Y**	iv
Nigeria	Y	O*	i	N/A	Y	i	Y	N*	Y	N*	N	N/A
Norway	Y	O*	Y	N/A	Y	i	Y	Y	Y	Y	Y	i
Oman	Y	O	i	N/A	Y	i	Y	N	Y	N	N	N/A
Pakistan	Y	O*	i	N/A	i*	i	Y	N*	Y	N*	N	N/A
Panama	Y	O*	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Papua New Guinea	Y	O*	i	N/A	Y	i	Y	N*	Y	N*	N	N/A
Philippines	Y	O	Y	N/A	i	i	Y	N	Y	N	N	N/A
Poland	Y	O	Y	N/A	Y	i	Y	Y*	Y	Y*	N	N/A
Portugal	Y	O	i	N/A	i*	i	Y	N*	Y	N*	N	N/A
Qatar	Y	O*	i	N/A	Y	i	Y	N*	Y	Y	Y	i
Romania	Y	O	i	N/A	i**	i	Y	N*	Y	N*	N	N/A
Russia	Y	O*	i	N/A	Y	i	Y	N*	Y	N*	N	N/A
Saint Kitts and Nevis	Y	N	iv	No MAP provision	i	i	N	N	N	N	N	N/A
Saudi Arabia	Y	O**	ii*	2-years	Y	i	Y	N	Y	Y	N	N/A
Senegal	Y	O*	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Serbia	Y	O	i	N/A	i***	i	Y	Y*	Y	Y*	N	N/A

		Article 25(1) of the OECD Model Tax Convention ("MTC")			Article 9(2) of the OECD MTC	Anti-abuse	Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC		Arbitration	
		B.1			B.3	B.4	C.1	D.3	A.1	B.7	C.6	
Column 1	Column 2	Column 3	Column 4		Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	
Treaty partner	DTC in force?	Is Art. 25(1), first sentence included? If yes, submission to either competent authority (new Art. 25(1), first sentence)	Is Art. 25(1), second sentence included? If no, please state reasons		Is Art. 9(2) included?	Inclusion 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?	Is Art. 25(2) first sentence included?	Is Art. 25(2) second sentence included? If no, alternative provision in Art. 7 & 9 OECD MC?	Is Art. 25(3) first sentence included?	Is Art. 25(3) second sentence included?	Inclusion arbitration provision?	
Sierra Leone	Y	N	iv	No MAP provision	i	i	N	N	N	N	N	N/A
Singapore	Y	O	i	N/A	i*	i	Y	N*	Y	Y	N	N/A
Slovak Republic	Y	O	i	N/A	i	i	Y	N*	Y	N*	N	N/A
Slovenia	Y	O	i	N/A	Y	i	Y	Y*	Y	Y	Y***	iv
Solomon Islands	Y	N	iv	No MAP provision	i	i	N	N	N	N	N	N/A
South Africa	Y	O	i	N/A	Y	i	Y	N*	Y	Y	N	N/A
Spain	Y	O	Y	N/A	Y	i	Y	N*	Y	Y	Y	i
Sri Lanka	Y	O	i	N/A	i	i	Y	N	Y	N	N	N/A
Sudan	Y	O	i	N/A	i	i	Y	N	Y	N	N	N/A
Sweden	Y	E*	Y	N/A	Y	i	Y	Y	Y	Y	Y***	iv
Switzerland	Y	E	Y	N/A	Y	i	Y	N	Y	Y	Y	i
Tajikistan	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	i
Chinese Taipei	Y	O	i	N/A	Y	i	Y	N	Y	Y	N	N/A
Thailand	Y	O	i	N/A	i	i	Y	N	Y	N	N	N/A
Trinidad and Tobago	Y	O	i	N/A	i	i	Y	N	Y	N	N	N/A
Tunisia	Y	O*	i	N/A	i*	i	Y	N*	Y	N*	N	N/A
Turkey	Y	O*	i	N/A	Y	i	Y	N*	Y	N*	N	N/A

		Article 25(1) of the OECD Model Tax Convention (“MTC”)			Article 9(2) of the OECD MTC	Anti-abuse	Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC		Arbitration	
		B.1			B.3	B.4	C.1	D.3	A.1	B.7	C.6	
Column 1	Column 2	Column 3	Column 4		Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	
Treaty partner	DTC in force?	Is Art. 25(1), first sentence included? If yes, submission to either competent authority (new Art. 25(1), first sentence)	Is Art. 25(1), second sentence included? If no, please state reasons		Is Art. 9(2) included?	Inclusion 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?	Is Art. 25(2) first sentence included?	Is Art. 25(2) second sentence included? If no, alternative provision in Art. 7 & 9 OECD MC?	Is Art. 25(3) first sentence included?	Is Art. 25(3) second sentence included?	Inclusion arbitration provision?	
Turkmenistan	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Tuvalu	Y	N	iv	No MAP provision	i	i	N	N	N	N	N	N/A
Uganda	Y	O	i	N/A	Y	i	Y	N	Y	N	N	N/A
Ukraine	Y	E	Y	N/A	Y	i	Y	Y	Y	Y	Y	i
United Arab Emirates	Y	O*	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
United States	Y	O	Y	N/A	Y	i	Y	N	Y	Y	N	N/A
Uruguay	Y	O*	Y	N/A	Y	i	Y	Y	Y	Y	Y	i
Uzbekistan	Y	E	Y	N/A	Y	i	Y	Y	Y	Y	Y	i
Venezuela	Y	O	i	N/A	Y	i	Y	N	Y	N	N	N/A
Viet Nam	Y	O	i	N/A	Y	i	Y	N	Y	N	N	N/A
Zambia	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Zimbabwe	Y	O	i	N/A	Y	i	Y	N	Y	N	N	N/A

*Note:* a. Footnote by Turkey: The information in this document with reference to “Cyprus” relates to the southern part of the Island. There is no single authority representing both Turkish and Greek Cypriot people on the Island. Turkey recognises the Turkish Republic of Northern Cyprus (TRNC). Until a lasting and equitable solution is found within the context of United Nations, Turkey shall preserve its position concerning the “Cyprus” issue.

Footnote by all the European Union Member States of the OECD and the European Union: The Republic of Cyprus is recognised by all members of the United Nations with the exception of Turkey. The information in this document relates to the area under the effective control of the Government of the Republic of Cyprus.



*Legend*

- E\* The provision contained in this treaty was already in line with the requirements under this element of the Action 14 Minimum Standard, but has been modified by the Multilateral Instrument to allow the filing of a MAP request in either contracting state.
- E\*\* The provision contained in this treaty was not in line with the requirements under this element of the Action 14 Minimum Standard, but the treaty has been modified by the Multilateral Instrument and is now in line with this standard.
- O\* The provision contained in this treaty is already in line with the requirements under this element of the Action 14 Minimum Standard, but will be modified by the Multilateral Instrument upon entry into force for this specific treaty and will then allow the filing of a MAP request in either contracting state.
- Y\* The provision contained in this treaty was not in line with the requirements under this element of the Action 14 Minimum Standard, but the treaty has been modified by the Multilateral Instrument and is now in line with this element of the Action 14 Minimum Standard.
- Y\*\* The provision contained in this treaty already included an arbitration provision, which has been replaced by part VI of the Multilateral Instrument containing a mandatory and binding arbitration procedure.
- Y\*\*\* The provision contained in this treaty did not include an arbitration provision, but part VI of the Multilateral Instrument applies, following which a mandatory and binding arbitration procedure is included in this treaty
- i\*/ii\*/iv\*/N\* The provision contained in this treaty is not in line with the requirements under this element of the Action 14 Minimum Standard, but the treaty will be modified by the Multilateral Instrument upon entry into force for this specific treaty and will then be in line with this element of the Action 14 Minimum Standard.
- i\*\*/iv\*\*/N\*\* The provision contained in this treaty is not in line with the requirements under this element of the Action 14 Minimum Standard, but the treaty will be superseded by the Multilateral Instrument upon entry into force for this specific treaty only to the extent that existing treaty provisions are incompatible with the relevant provision of the Multilateral Instrument.
- i\*\*\* The provision contained in this treaty is not in line with the requirements under this element of the Action 14 Minimum Standard, but the treaty will be superseded by the Multilateral Instrument only to the extent that existing treaty provisions are incompatible with the relevant provision of the Multilateral Instrument.

## Annex B

### MAP statistics pre-2016 cases

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
		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	183	0	0	0	1	3	21	1	3	0	5	149	27.59
Others	79	0	0	1	0	2	6	1	0	1	0	68	55.87
Total	262	0	0	1	1	5	27	2	3	1	5	217	34.50

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
		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	149	0	0	0	0	2	27	2	0	4	4	110	38.67
Others	68	0	0	0	0	0	15	0	0	0	0	53	35.20
Total	217	0	0	0	0	2	42	2	0	4	4	163	37.71

## Annex C

### MAP statistics post-2015 cases

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	64	1	0	0	0	0	2	0	1	0	0	60	8.53
Others	0	51	0	1	0	0	0	6	0	0	0	2	42	2.97
Total	0	115	1	1	0	0	0	8	0	1	0	2	102	4.36

Notes: The figures are different from the 2016 MAP statistics published for the United Kingdom because:

- (i) Some cases were inadvertently not included in 2016 MAP statistics.
- (ii) Some cases have been reclassified.
- (iii) The United Kingdom has been informed after submitting its MAP statistics that one case had been closed in 2016 already.

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	60	110	2	0	3	4	0	19	0	0	0	0	142	6.34
Others	42	234	4	3	2	74	0	35	0	6	0	0	152	3.10
Total	102	344	6	3	5	78	0	54	0	6	0	0	294	3.70

## *Glossary*

<b>Action 14 Minimum Standard</b>	The minimum standard as agreed upon in the final report on Action 14: Making Dispute Resolution Mechanisms More Effective
<b>APA guidance</b>	Statement of Practice 2/2010 of November 2016
<b>Look-back period</b>	Period starting from 1 January 2015 for which the United Kingdom wished to provide information and requested peer input
<b>MAP guidance</b>	Statement of Practice 1/2018 of January 2018
<b>MAP Statistics Reporting Framework</b>	Rules for reporting of MAP statistics as agreed by the FTA MAP Forum
<b>Multilateral Instrument</b>	Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting
<b>OECD Model Tax Convention</b>	OECD Model Tax Convention on Income and on Capital as it read on 21 November 2017
<b>Pre-2016 cases</b>	MAP cases in a competent authority’s inventory that are pending resolution on 31 December 2015
<b>Post-2015 cases</b>	MAP cases that are received by a competent authority from the taxpayer on or after 1 January 2016
<b>Statistics Reporting Period</b>	Period for reporting MAP statistics that started on 1 January 2016 and ended on 31 December 2017
<b>Terms of Reference</b>	Terms of reference to monitor and review the implementing of the BEPS Action 14 Minimum Standard to make dispute resolution mechanisms more effective



## OECD/G20 Base Erosion and Profit Shifting Project

# Making Dispute Resolution More Effective – MAP Peer Review Report, United Kingdom (Stage 2)

## 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 2 peer monitoring of the implementation of the Action 14 Minimum Standard by the United Kingdom, which is accompanied by a document addressing the implementation of best practices which can be accessed on the OECD website.

Consult this publication on line at <https://doi.org/10.1787/33e2bf3d-en>.

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