

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



Making Dispute Resolution More Effective – MAP Peer Review Report, Brunei Darussalam (Stage 1)

INCLUSIVE FRAMEWORK ON BEPS: ACTION 14



OECD/G20 Base Erosion and Profit Shifting Project

Making Dispute Resolution More Effective – MAP Peer Review Report, Brunei Darussalam (Stage 1)

INCLUSIVE FRAMEWORK ON BEPS: ACTION 14

This document, as well as any data and map included herein, are without prejudice to the status of or sovereignty over any territory, to the delimitation of international frontiers and boundaries and to the name of any territory, city or area.

Please cite this publication as:

OECD (2020), *Making Dispute Resolution More Effective – MAP Peer Review Report, Brunei Darussalam (Stage 1): Inclusive Framework on BEPS: Action 14*, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris,
<https://doi.org/10.1787/87e2abc5-en>.

ISBN 978-92-64-44426-3 (print)

ISBN 978-92-64-95734-3 (pdf)

OECD/G20 Base Erosion and Profit Shifting Project

ISSN 2313-2604 (print)

ISSN 2313-2612 (online)

Photo credits: Cover © ninog-Fotolia.com.

Corrigenda to publications may be found on line at: www.oecd.org/about/publishing/corrigenda.htm.

© OECD 2020

The use of this work, whether digital or print, is governed by the Terms and Conditions to be found at <http://www.oecd.org/termsandconditions>.

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 OECD/G20 Inclusive Framework on BEPS (Inclusive Framework), 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 136 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 11 December 2019 and prepared for publication by the OECD Secretariat.

Table of contents

Abbreviations and acronyms	7
Executive summary	9
Introduction	11
Reference	13
Part A. Preventing disputes	15
[A.1] Include Article 25(3), first sentence, of the OECD Model Tax Convention in tax treaties	15
[A.2] Provide roll-back of bilateral APAs in appropriate cases	16
References	17
Part B. Availability and access to MAP	19
[B.1] Include Article 25(1) of the OECD Model Tax Convention in tax treaties	19
[B.2] Allow submission of MAP requests to the competent authority of either treaty partner, or, alternatively, introduce a bilateral consultation or notification process	22
[B.3] Provide access to MAP in transfer pricing cases	23
[B.4] Provide access to MAP in relation to the application of anti-abuse provisions	25
[B.5] Provide access to MAP in cases of audit settlements	26
[B.6] Provide access to MAP if required information is submitted	27
[B.7] Include Article 25(3), second sentence, of the OECD Model Tax Convention in tax treaties	28
[B.8] Publish clear and comprehensive MAP guidance	29
[B.9] Make MAP guidance available and easily accessible and publish MAP profile	31
[B.10] Clarify in MAP guidance that audit settlements do not preclude access to MAP	32
References	33
Part C. Resolution of MAP cases	35
[C.1] Include Article 25(2), first sentence, of the OECD Model Tax Convention in tax treaties	35
[C.2] Seek to resolve MAP cases within a 24-month average timeframe	36
[C.3] Provide adequate resources to the MAP function	37
[C.4] Ensure staff in charge of MAP has the authority to resolve cases in accordance with the applicable tax treaty	39
[C.5] Use appropriate performance indicators for the MAP function	40
[C.6] Provide transparency with respect to the position on MAP arbitration	41
References	41
Part D. Implementation of MAP agreements	43
[D.1] Implement all MAP agreements	43

[D.2] Implement all MAP agreements on a timely basis	44
[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)	45
References	46
Summary	47
<i>Annex A. Tax treaty network of Brunei Darussalam</i>	51
<i>Annex B. MAP statistics reporting for pre-2016 cases</i>	53
<i>Annex C. MAP statistics reporting for post-2015 cases</i>	55
Glossary	57

Abbreviations and acronyms

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

Executive summary

Brunei Darussalam has a modest tax treaty network with almost 20 tax treaties. Brunei Darussalam has a newly established MAP programme and has no experience with resolving MAP cases as it has not yet been involved in any cases. Overall Brunei Darussalam meets most of the elements of the Action 14 Minimum Standard. Where it has deficiencies, Brunei Darussalam is working to address some of them.

All but one of Brunei Darussalam's tax treaties contain a provision relating to MAP. Those treaties mostly follow paragraphs 1 through 3 of Article 25 of the OECD Model Tax Convention. Its treaty network is largely consistent with the requirements of the Action 14 Minimum Standard, except mainly for the fact that approximately 20% of its tax treaties neither contain a provision stating that mutual agreements shall be implemented notwithstanding any time limits in domestic law (which is required under Article 25(2), second sentence), nor the alternative provisions for Article 9(1) and Article 7(2) to set a time limit for making transfer pricing adjustments.

In order to be fully compliant with all four key areas of an effective dispute resolution mechanism under the Action 14 Minimum Standard, Brunei Darussalam needs to amend and update a certain number of its tax treaties. In this respect, Brunei Darussalam indicated it is currently reviewing the possibility to sign the Multilateral Instrument, through which a number of its tax treaties would potentially be modified to fulfil the requirements under the Action 14 Minimum Standard. Brunei Darussalam further reported that it would also look to amend the tax treaties bilaterally, with all its treaty partners and that the pace of renegotiation will depend on the response and communication methods used by both parties, to be compliant with the requirements under the Action 14 Minimum Standard, but it has not yet put in place a plan in relation hereto.

As Brunei Darussalam has no bilateral APA programme in place, there were no elements to assess regarding the prevention of disputes.

Brunei Darussalam meets some of 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 it has since 1 January 2016 not received any MAP requests. However, Brunei Darussalam does not have in place a documented notification process for those situations in which its competent authority considers the objection raised by taxpayers in a MAP request as not justified. Brunei Darussalam has clear and comprehensive guidance on the availability of MAP and how it applies this procedure in practice MAP guidance is comprehensive and available, but some further clarity could be provided. In particular, the guidance could cause confusion as it indicates that a MAP request will only be accepted if the issue is not one that Brunei Darussalam and/or the treaty partner's competent authority have decided, as a matter of policy, not to consider while Brunei Darussalam clarified that this concerns issues that are found not to be related to the relevant tax treaty.

Brunei Darussalam has not been involved in any MAP cases during the period 2016-18 but meets in principle all the requirements under the Action 14 Minimum Standard in relation to the resolution of MAP cases.

As there was no MAP agreement reached that required implementation in 2016, 2017 or 2018, it was not yet possible to assess whether Brunei Darussalam meets the Action 14 Minimum Standard as regards the implementation of MAP agreements. However, there is a risk of non-implementation of MAP agreements after a given period of time, when retrieval of the relevant accounting documents is no longer possible.

Introduction

Available mechanisms in Brunei Darussalam to resolve tax treaty-related disputes

Brunei Darussalam has entered into 19 tax treaties on income (and/or capital), 18 of which are in force.¹ These 19 treaties are being applied to 19 jurisdictions. All but one of these treaties provides for a mutual agreement procedure for resolving disputes on the interpretation and application of the provisions of the tax treaty.

Under Brunei Darussalam’s tax treaties, the competent authority function is assigned to the Minister of Finance and Economy or his authorised representative. This has been delegated to the Revenue Division of the Ministry of Finance and Economy. The competent authority of Brunei Darussalam currently employs three employees in the International Unit within the Revenue Division who are responsible for both other and attribution/allocation cases in addition to other non-MAP related duties.

Brunei Darussalam issued guidance on the governance and administration of the mutual agreement procedure (“MAP”) in March 2019, which is available in English at:

https://www.mofe.gov.bn/Shared%20Documents/revenue/MAP/MUTUAL_AGREEMENT_PROCEDURE_GUIDELINES_Final.pdf

Recent developments in Brunei Darussalam

Brunei Darussalam reported it is currently conducting tax treaty negotiations with the Philippines and Thailand.

Brunei Darussalam reported it will strive to update its tax treaties via bilateral negotiations to be compliant with the Action 14 Minimum Standard. Brunei Darussalam further reported that it is currently reviewing the possibility to sign the Multilateral Instrument in order to meet the BEPS Action 14 Minimum Standard. Brunei Darussalam also reported that it would look to amend the tax treaties bilaterally, with all its treaty partners and that the pace of renegotiation will depend on the response and communication methods used by both parties.

Basis for the peer review process

The peer review process entails an evaluation of Brunei Darussalam’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 (if any) and the practical application of that framework. The review process performed is desk-based and conducted through specific questionnaires completed by Brunei Darussalam and its

peers. The questionnaires for the peer review process were sent to Brunei Darussalam and the peers on 27 March 2019.

The period for evaluating Brunei Darussalam’s implementation of the Action 14 Minimum Standard ranges from 1 January 2016 to 31 March 2019. (“**Review Period**”). Furthermore, this report may depict some recent developments that have occurred after the Review Period, which at this stage will not impact the assessment of Brunei Darussalam’s implementation of this minimum standard. In the update of this report, being stage 2 of the peer review process, these recent developments will be taken into account in the assessment and, if necessary, the conclusions contained in this report will be amended accordingly.

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

No peers have provided input on Brunei Darussalam’s implementation of the Action 14 Minimum Standard. This can be explained by the fact that Brunei Darussalam’s competent authority has never been involved in a MAP case as it has never received a MAP request from a taxpayer or from another competent authority. Brunei Darussalam provided extensive answers in its questionnaire, which was submitted on time. Brunei Darussalam was very responsive in the course of the drafting of the peer review report by responding timely and comprehensively to requests for additional information, and provided further clarity where necessary. In addition, Brunei Darussalam provided the following information:

- MAP profile²
- MAP statistics³ according to the MAP Statistics Reporting Framework (see below).

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

Overview of MAP caseload in Brunei Darussalam

As mentioned above, Brunei Darussalam has not been involved in any MAP cases during the Review Period.

General outline of the peer review report

This report includes an evaluation of Brunei Darussalam’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**”).⁴ Furthermore, the report depicts the changes adopted and plans shared by Brunei Darussalam to implement elements of the Action 14 Minimum Standard where relevant. The conclusion of each element identifies areas for improvement (if any) and provides for recommendations how the specific area for improvement should be addressed.

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

Notes

1. The tax treaties Brunei Darussalam has entered into are available at: <https://www.mofe.gov.bn/divisions/avoidance-of-double-taxation-adta.aspx>. The treaty that is signed but has not yet entered into force is with Tajikistan. For that reason the newly negotiated treaty is taken into account in the treaty analysis. Reference is made to Annex A for the overview of Brunei Darussalam’s tax treaties.
2. Available at <https://www.oecd.org/tax/dispute/Brunei-Dispute-Resolution-Profile.pdf>.
3. The MAP statistics of Brunei Darussalam are included in Annex B and C of this report.
4. Terms of reference to monitor and review the implementing of the BEPS Action 14 Minimum Standard to make dispute resolution mechanisms more effective. Available at: www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf.

Reference

OECD (2016), *BEPS Action 14 on More Effective Dispute Resolution Mechanisms – Peer Review Documents*, OECD/G20 Base Erosion and Profit Shifting Project, OECD, Paris. www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-mechanisms-peer-review-documents.pdf.

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 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 Brunei Darussalam’s tax treaties

2. Out of Brunei Darussalam’s 19 tax treaties, 17 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. Two treaties do not contain any provision based on, or equivalent to, Article 25(3) second sentence, of the OECD Model Tax Convention.

3. Brunei Darussalam reported that it considers itself able to enter into interpretative MAP agreements irrespective of whether the applicable treaty contains a provision equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention.

Anticipated modifications

Bilateral modifications

4. For those treaties, which do not contain a provision equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention, Brunei Darussalam reported it will strive to update them via bilateral negotiations to be compliant with element A.1. Brunei Darussalam reported that it is currently reviewing the possibility to sign the Multilateral Instrument in order to meet the BEPS Action 14 Minimum Standard. Brunei Darussalam also reported that it would look to amend the tax treaties bilaterally, with all its treaty partners and that the pace of renegotiation will depend on the response and communication

methods used by both parties. In addition, Brunei Darussalam reported it will seek to include Article 25(3), first sentence, of the OECD Model Tax Convention in all of its future tax treaties.

Peer input

5. No peer input was provided.

Conclusion

	Areas for improvement	Recommendations
[A.1]	Two out of 19 tax treaties do not contain a provision that is equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention.	Where treaties do not contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax, Brunei Darussalam should request the inclusion of the required provision via bilateral negotiations. To this end, Brunei Darussalam should put a plan in place on how it envisages updating these treaties to include the required provision.
	-	In addition, Brunei Darussalam should maintain its stated intention to include the required provision in all future tax treaties.

[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.

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

Brunei Darussalam’s APA programme

7. Brunei Darussalam does not have an APA programme, by which there is no possibility for providing roll-back of bilateral APAs to previous years. Brunei Darussalam did report, however, that it considers that tax treaties that contain a provision allowing both contracting states to consult together for the elimination of double taxation in cases not provided for in the convention could be applied to the conclusion of bilateral APAs. Brunei Darussalam further reported that it considers that it would be able to grant roll-back of bilateral APAs in such cases, subject to the applicable time limits and where the relevant facts and circumstances are the same.

Practical application of roll-back of bilateral APAs

8. No peer input was provided.

Anticipated modifications

9. Brunei Darussalam indicated that it does not anticipate any modifications in relation to element A.2.

Conclusion

	Areas for improvement	Recommendations
[A.2]	-	-

Note

1. This description of an APA based on the definition of an APA in the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations.

References

OECD (2017), OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations 2017, OECD Publishing, Paris, <https://doi.org/10.1787/tpg-2017-en>.

OECD (2019), *Model Tax Convention on Income and on Capital 2017 (Full Version)*, OECD Publishing, Paris, <https://doi.org/10.1787/g2g972ee-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.

10. 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 Brunei Darussalam's tax treaties

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

11. Out of Brunei Darussalam's 19 tax treaties, 16 contain a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention as it read prior to the adoption of the Action 14 final report, allowing taxpayers to submit a MAP request to the competent authority of the state in which they are resident when they consider that the actions of one or both of the treaty partners result or will result for the taxpayer in taxation not in accordance with the provisions of the tax treaty and that can be requested irrespective of the remedies provided by domestic law of either state. None of Brunei Darussalam's tax treaties contain a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention, as changed by the Action 14 final report and allowing taxpayers to submit a MAP request to the competent authority of either state.

12. The remaining three treaties can be categorised as follows:

Provision	Number of tax treaties
No MAP provision	1
A variation of Article 25(1), first sentence, of the OECD Model Tax Convention as it read prior to the adoption of the Action 14 final report, whereby taxpayers can only submit a MAP request to the competent authority of the contracting state of which they are resident.	2

13. The treaty in the first row of the table above does not contain any provision relating to MAP at all. The remaining two treaties mentioned in the second row in the table above are initially considered not to have the full equivalent of Article 25(1), first sentence, of the 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, both of these treaties are considered to be in line with this part of element B.1 due to the fact that the non-discrimination provision of the relevant tax treaty only covers nationals that are resident of one of the contracting states. Therefore, it is logical to allow only for the submission of MAP requests to the state of which the taxpayer is a resident.

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

14. Out of Brunei Darussalam’s 19 tax treaties, 16 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 no less than three years from the first notification of the action resulting in taxation not in accordance with the provisions of the particular tax treaty.

15. The remaining three tax treaties that do not contain such provision can be categorised as follows:

Provision	Number of tax treaties
No MAP provision	1
Filing period less than 3 years for a MAP request (2-years)	2

Practical application

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

16. All but one of Brunei Darussalam’s tax treaties contain a provision allowing taxpayers to file a MAP request irrespective of domestic remedies. Brunei Darussalam’s Mutual Agreement Procedure Guidelines (“**MAP Guidance**”) states that MAP does not deprive taxpayers of other remedies available under their respective domestic tax law. This guidance further states that taxpayers should inform Brunei Darussalam’s and the relevant foreign competent authority if the matter is adjudicated through any legal or judicial proceedings while the MAP process is still ongoing. Brunei Darussalam’s MAP guidance also makes it clear that where the matter has been subjected to litigation and determination by Brunei Darussalam’s tribunals and courts, the Ministry of Finance is unlikely to depart from the determination of Brunei Darussalam’s tribunals and courts.

17. Brunei Darussalam’s MAP guidance stated that a MAP request will only be accepted if it is evident that the actions of one or both countries resulted or will result in

taxation not in accordance with the tax treaty. However, Brunei Darussalam clarified that its competent authority expects from the taxpayer general explanations, if possible with proof or evidence, on how the actions of one or both countries resulted or will result in taxation not in accordance with the tax treaty. It is further stated that a MAP request will only be accepted if the issue is not one that Brunei and/or the treaty partner's competent authority have decided, as a matter of policy, not to consider. However, Brunei Darussalam clarified that this concerns issues that are found not to be related to the relevant tax treaty.

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

18. Although there is only one tax treaty that does not contain a filing period, which is the treaty that does not contain any MAP provision at all, Brunei Darussalam's MAP guidance states that if the time limit for presenting a MAP application is not specified in the relevant tax treaty, Brunei Darussalam's competent authority will follow the time limits specified in Article 25 on MAP of the OECD Model Tax Convention, which is within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the convention.

Anticipated modifications

Bilateral modifications

19. Brunei Darussalam reported that when the tax treaties that do not contain the equivalent of the first and second sentence of Article 25(1) of the OECD Model Tax Convention, as it read prior to the adoption of the Action 14 final report, it will strive to update them via bilateral negotiations to be compliant with element B.1. Brunei Darussalam further reported that it is currently reviewing the possibility to sign the Multilateral Instrument in order to meet the BEPS Action 14 Minimum Standard. Brunei Darussalam also reported that it would look to amend the tax treaties bilaterally, with all its treaty partners and that the pace of renegotiation will depend on the response and communication methods used by both parties. In addition, Brunei Darussalam reported it will seek to include Article 25(1), first sentence, as amended by the Action 14 final report, in all of its future tax treaties.

Peer input

20. No peer input was provided.

Conclusion

	Areas for improvement	Recommendations
[B.1]	One of 19 tax treaties does not contain a MAP provision at all, whereby there is no provision equivalent to the first and second sentence of Article 25(1) of the OECD Model Tax Convention.	Where treaties do not contain the equivalent of Article 25(1) of the OECD Model Tax Convention, Brunei Darussalam should request the inclusion of the required provision via bilateral negotiations. This concerns both: <ul style="list-style-type: none"> a provision that is equivalent to Article 25(1), first sentence of the OECD Model Tax Convention either: <ol style="list-style-type: none"> As amended in the Action 14 final report; or As it read prior to the adoption of Action 14 final report; and a provision that allows taxpayers to submit a MAP request within a period of no less than three years as from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty.
	Two out of 19 tax treaties do not contain the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention, as the timeline to file a MAP request is shorter than three years from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty.	Where treaties do not contain the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention, Brunei Darussalam should request the inclusion of the required provision via bilateral negotiations.
		To this end, Brunei Darussalam should put a plan in place on how it envisages updating these treaties to include the required provision. In addition, Brunei Darussalam should maintain its stated intention to include Article 25(1) of the OECD Model Tax Convention as amended in the Action 14 final report in all future tax treaties.

[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).

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

- of either treaty partner; or, in the absence of such provision,
- 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

22. As discussed under element B.1, out of Brunei Darussalam’s 19 treaties, none currently contain a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention as changed by the Action 14 final report, allowing taxpayers to submit a MAP request to the competent authority of either treaty partner.

23. Brunei Darussalam reported that in the event that it receives a MAP request it will notify the competent authority of the other treaty partner to provide its views on the case when Brunei Darussalam’s competent authority considers the objection raised in the MAP request not to be justified. This process, however, is not documented.

Practical application

24. Brunei Darussalam reported that since 1 January 2016 its competent authority has not received any MAP requests. Therefore, there were no cases where it was decided that the objection raised by taxpayers in such request was not justified.

25. No peer input was provided.

Anticipated modifications

26. Brunei Darussalam indicated that it does not anticipate any modifications in relation to element B.2.

Conclusion

	Areas for improvement	Recommendations
[B.2]	All tax treaties do not contain a provision equivalent to Article 25(1) of the OECD Model Tax Convention as changed by the Action 14 final report, allowing taxpayers to submit a MAP request to the competent authority of either treaty partners. No documented bilateral consultation or notification process is in place, which allows the other competent authority concerned to provide its views on the case when the taxpayer’s objection raised in the MAP request is considered not to be justified.	Brunei Darussalam should without further delay document its notification process and provide in that document rules of procedure on how that process should be applied in practice, including the steps to be followed and timing of these steps. Furthermore, Brunei Darussalam should apply its notification process for future cases in which its competent authority considered the objection raised in a MAP request not to be justified and when the tax treaty concerned does not contain Article 25(1) of the OECD Model Tax Convention as amended by the Action 14 final report.

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

Jurisdictions should provide access to MAP in transfer pricing cases.

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

Legal and administrative framework

28. Out of Brunei Darussalam 19 tax treaties, 14 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 treaty partner. Furthermore, two treaties do not contain such a provision at all. The remaining three treaties contain a provision that is based on Article 9(2) of the OECD Model Tax Convention, but deviate from this provision for the following reasons:

- One treaty contains a provision that is based on Article 9(2) of the OECD Model Tax Convention, but the granting of a corresponding adjustment is only optional as the word “shall” is replaced by “may”.
- One treaty contains a provision that is based on Article 9(2), but is missing the part of the last sentence of the provision that reads “... and the competent authorities of the Contracting States shall, if necessary, consult each other.”
- Another treaty also misses the last sentence mentioned in the bullet point above and only allows for a corresponding adjustment to be granted through the mutual agreement procedure.

29. Access to MAP should be provided in transfer pricing cases regardless of whether the equivalent of Article 9(2) is contained in Brunei Darussalam’s tax treaties and irrespective of whether its domestic legislation enables the granting of corresponding adjustments. In accordance with element B3, as translated from the Action 14 Minimum Standard, Brunei Darussalam indicated that it will always provide access to MAP for transfer pricing cases and is willing to make corresponding adjustments.

Application of legal and administrative framework in practice

30. Brunei Darussalam reported that since 1 January 2016, it has not denied access to MAP on the basis that the case concerned a transfer pricing case.

31. No peer input was provided.

Anticipated modifications

32. Brunei Darussalam 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 Article 9(2) of the OECD Model Tax Convention in all of its future tax treaties.

Conclusion

	Areas for improvement	Recommendations
[B.3]	Although Brunei Darussalam reported that it will provide access to MAP in transfer pricing cases, it did not receive any MAP request for such cases during the Review Period. Brunei Darussalam is therefore recommended to follow its policy and grant access to MAP in such cases.	

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

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

33. 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

34. None of Brunei Darussalam’s 19 tax treaties allow competent authorities to restrict access to MAP for cases where a treaty anti-abuse provision applies or where 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 Brunei Darussalam do not include a provision allowing its competent authority to limit access to MAP for cases in which there is a disagreement between the taxpayer and the tax authorities as to whether the conditions for the application of a domestic law anti-abuse provision is in conflict with the provisions of a tax treaty.

Practical application

35. Brunei Darussalam reported that since 1 January 2016 it has not denied access to MAP in any 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 in conflict with the provisions of a tax treaty.

36. No peer input was provided.

Anticipated modifications

37. Brunei Darussalam indicated that it does not anticipate any modifications in relation to element B.4.

Conclusion

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

[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.

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

Legal and administrative framework***Audit settlements***

39. Under Brunei Darussalam’s domestic law it is possible that taxpayers and the tax administration enter into an audit settlement. Brunei Darussalam’s MAP guidance states that in cases that involve adjustment of tax or income as a result of an audit settlement, taxpayers are encouraged to notify its competent authority of its intention to request a MAP as soon as the notice of assessment is issued or when the taxpayer files an appeal. Brunei Darussalam further clarified that taxpayers will always be able to submit a MAP request where eligible despite such settlement occurring.

Administrative or statutory dispute settlement/resolution process

40. Brunei Darussalam reported it does not have an administrative or statutory dispute settlement/resolution process in place, which is independent from the audit and examination functions and which can only be accessed through a request by the taxpayer.

Practical application

41. Brunei Darussalam reported that since 1 January 2016 it has not denied access to MAP in any cases where the issue presented by the taxpayer in a MAP request has already been resolved through an audit settlement between the taxpayer and the tax administration.

42. No peer input was provided.

Anticipated modifications

43. Brunei Darussalam indicated that it does not anticipate any modifications in relation to element B.5.

Conclusion

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

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

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

44. 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

45. The information and documentation Brunei Darussalam requires taxpayers to include in a request for MAP assistance are discussed under element B.8.

46. Brunei Darussalam reported that when its competent authority receives a MAP request that does not include all the information and documentation required to be submitted pursuant to Brunei Darussalam's MAP guidelines, it will request such information and documentation within two months from the receipt of the MAP submission. If the taxpayer does not provide the requested information within the required two months without any reasonable justification, Brunei Darussalam reported that it would reject the application. However, if a reasonable explanation is provided, Brunei Darussalam noted that it would extend the deadline in such cases.

Practical application

47. Brunei Darussalam reported that it provides access to MAP in all cases where taxpayers have complied with the information or documentation requirements as set out in its MAP guidance. It further reported that since 1 January 2016 it has not received any MAP requests and therefore has not denied access to MAP for cases where the taxpayer had not provided the required information or documentation.

48. No peer input was provided.

Anticipated modifications

49. Brunei Darussalam indicated that it does not anticipate any modifications in relation to element B.6.

Conclusion

	Areas for improvement	Recommendations
[B.6]	Brunei Darussalam reported it will give access to MAP in cases where taxpayers have complied with Brunei Darussalam's information and documentation requirements for MAP requests. Its competent authority, however, did not receive any MAP requests from taxpayers during the Review Period. Brunei Darussalam is therefore recommended to follow its policy and grant access to MAP when it receives a request that includes the required information and documentation.	

[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.

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

Current situation of Brunei Darussalam's tax treaties

51. Out of Brunei Darussalam's 19 tax treaties, 17 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. Of the remaining two treaties, two do not contain any provision at all based on Article 25(3), second sentence, of the OECD Model Tax Convention.

Anticipated modifications

Bilateral modifications

52. For those treaties, which do not contain a provision equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention, Brunei Darussalam reported it will strive to update them via bilateral negotiations to be compliant with element B.7. Brunei Darussalam reported that it is currently reviewing the possibility to sign the Multilateral Instrument in order to meet the BEPS Action 14 Minimum Standard. Brunei Darussalam also reported that it would look to amend the tax treaties bilaterally, with all its treaty partners and that the pace of renegotiation will depend on the response and communication methods used by both parties. In addition, Brunei Darussalam reported it will seek to include Article 25(3), second sentence, of the OECD Model Tax Convention in all of its future tax treaties.

Peer input

53. No peer input was provided.

Conclusion

	Areas for improvement	Recommendations
[B.7]	Two out of 19 tax treaties do not contain a provision that is equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention.	Where treaties do not contain the equivalent of Article 25(3), second sentence, of the OECD Model Tax, Brunei Darussalam should request the inclusion of the required provision via bilateral negotiations. To this end, Brunei Darussalam should put a plan in place on how it envisages updating these treaties to include the required provision.
	-	In addition, Brunei should maintain its stated intention to include the required provision in all future tax treaties.

[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.

54. 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.

Brunei Darussalam's MAP guidance

55. Brunei Darussalam's rules, guidelines and procedures are available at:

https://www.mofe.gov.bn/Shared%20Documents/revenue/MAP/MUTUAL_AGREEMENT_PROCEDURE_GUIDELINES_Final.pdf

56. This contains information on:

- a. contact information of the competent authority or the office in charge of MAP cases
- b. the manner and form in which the taxpayer should submit its MAP request
- c. the specific information and documentation that should be included in a MAP request (see also below)
- d. how the MAP functions in terms of timing and the role of the competent authorities
- e. relationship with domestic available remedies
- f. access to MAP in audit settlements
- g. implementation of MAP agreements (including the steps of the process and the timing of such steps for the implementation of MAP agreements, and any actions to be taken by taxpayers)
- h. rights and role of taxpayers in the process
- i. suspension of tax collection.

57. In addition to the MAP guidelines described above, Brunei Darussalam also published a sample letter of authorisation for taxpayers, a flowchart of the MAP process and a detailed, three-page document outlining the steps of the MAP process, all of which can be found at the following link:

<https://www.mofe.gov.bn/Shared%20Documents/Forms/AllItems.aspx?RootFolder=%2fShared%20Documents%2frevenue%2fMAP&FolderCTID=0x0120007614A56F8325C54FA4BF9643934FF077>

58. The above-described MAP guidance of Brunei Darussalam includes detailed information on the availability and the use of MAP and how its competent authority conducts the procedure in practice. This guidance includes the information that the FTA MAP Forum agreed should be included in a jurisdiction's MAP guidance, which concerns:

- (i) contact information of the competent authority or the office in charge of MAP cases and
- (ii) the manner and form in which the taxpayer should submit its MAP request.¹

59. Although the information included in Brunei Darussalam’s MAP guidance is detailed and comprehensive, various subjects are not specifically discussed in Brunei Darussalam’s MAP guidance. This concerns information on:

- whether MAP is available in cases regarding: (i) transfer pricing, (ii) the application of anti-abuse provisions, (iii) multilateral disputes and (iv) bona fide foreign-initiated self-adjustments
- whether taxpayers can request for the multi-year resolution of recurring issues through MAP
- the possibility of suspension of tax collection during the course of a MAP.

Information and documentation to be included in a MAP request

60. 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 request for MAP assistance.² This agreed guidance is shown below. Brunei Darussalam’s MAP guidance enumerating which items must be included in a request for MAP assistance (if available) are checked in the following list:

- identity of the taxpayer(s) covered in the MAP request
- the basis for the request
- facts of the case
- analysis of the issue(s) requested to be resolved via MAP
- whether the MAP request was also submitted to the competent authority of the other treaty partner
- 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.

Anticipated modifications

61. Brunei Darussalam indicated that updates to its MAP guidance are in process.

Conclusion

	Areas for improvement	Recommendations
[B.8]	MAP guidance is comprehensive and available, but some further clarity could be provided. In particular, the guidance could cause confusion as it indicates that a MAP request will only be accepted if the issue is not one that Brunei Darussalam and/or the treaty partner's competent authority have decided, as a matter of policy, not to consider while Brunei Darussalam clarified that this concerns issues that are found not to be related to the relevant tax treaty.	<p>Although not required by the Action 14 Minimum Standard, in order to further improve the level of details of its MAP guidance Brunei Darussalam could consider including information on:</p> <ul style="list-style-type: none"> the issue(s) that Brunei Darussalam and/or the treaty partner's competent authority have decided, as a matter of policy, not to consider and clarify that this concerns issues that are found not to be related to the relevant tax treaty; Whether MAP is available regarding: (i) transfer pricing cases, (ii) the application of anti-abuse provisions, (iii) multilateral disputes and (iv) bona fide foreign-initiated self-adjustments Whether taxpayers can request for the multi-year resolution of recurring issues through MAP The possibility of suspension of tax collection during the course of a MAP

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

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

62. 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.³

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

63. The MAP guidance of Brunei Darussalam is published and can be found at:

https://www.mofe.gov.bn/Shared%20Documents/revenue/MAP/MUTUAL_AGREEMENT_PROCEDURE_GUIDELINES_Final.pdf

64. This guidance was last updated in December 2017. As regards its accessibility, Brunei Darussalam's MAP guidance can easily be found on the website of its Ministry of Finance and Economy by searching for "MAP" in the search box.

MAP profile

65. The MAP profile of Brunei Darussalam is published on the website of the OECD. This MAP profile is complete with detailed information. This profile contains external links that provide extra information and guidance where appropriate.

Anticipated modifications

66. Brunei Darussalam indicated that it does not anticipate any modifications in relation to element B.9.

Conclusion

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

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

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

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

MAP and audit settlements in the MAP guidance

68. As previously discussed under B.5, under Brunei Darussalam's domestic law it is possible for taxpayers and the tax administration to enter into audit settlements. The relationship between access to MAP and audit settlements is described under the "Time limit for requesting access to MAP" section of Brunei Darussalam's MAP guidance.

69. No peer input was provided.

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

70. As previously mentioned under element B.5, Brunei Darussalam 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. In that regard, there is no need to address the effects of such process with respect to MAP in Brunei Darussalam's MAP guidance.

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

71. As Brunei Darussalam does not have an internal administrative or statutory dispute settlement/resolution process in place, there is no need for notifying treaty partners of such process.

Anticipated modifications

72. Brunei Darussalam indicated that it does not anticipate any modifications in relation to element B.10.

Conclusion

	Areas for improvement	Recommendations
[B.10]	-	-

Notes

1. Available at: www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf.
2. Available at: www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf.
3. The shared public platform can be found at: www.oecd.org/ctp/dispute/country-map-profiles.htm.

References

OECD (2016), *BEPS Action 14 on More Effective Dispute Resolution Mechanisms – Peer Review Documents*, OECD/G20 Base Erosion and Profit Shifting Project, OECD, Paris. www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-mechanisms-peer-review-documents.pdf.

OECD (2019), *Model Tax Convention on Income and on Capital 2017 (Full Version)*, OECD Publishing, Paris, <https://doi.org/10.1787/g2g972ee-en>.

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.

73. It is of critical importance that in addition to allowing taxpayers to request for a MAP, tax treaties also include the equivalent of the first sentence of Article 25(2) of the OECD Model Tax Convention, 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 Brunei Darussalam’s tax treaties

74. Out of Brunei Darussalam’s 19 tax treaties, 18 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. The remaining treaty does not contain a provision relating to MAP at all.

Anticipated modifications

Bilateral modifications

75. For the treaty, which does not contain a provision equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention, Brunei Darussalam reported it will strive to update it via bilateral negotiations to be compliant with element C.1. Brunei Darussalam reported that it is currently reviewing the possibility to sign the Multilateral Instrument in order to meet the BEPS Action 14 Minimum Standard. Brunei Darussalam also reported that it would look to amend the tax treaties bilaterally, with all its treaty partners and that the pace of renegotiation will depend on the response and communication methods used by

both parties. In addition, Brunei Darussalam reported it will seek to include Article 25(2), first sentence, of the OECD Model Tax Convention in all of its future tax treaties.

Peer input

76. No peer input was provided.

Conclusion

	Areas for improvement	Recommendations
[C.1]	One out of 19 tax treaties does not contain a provision that is equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention.	<p>Where the treaty does not contain the equivalent of Article 25(2), first sentence, of the OECD Model Tax, Brunei Darussalam should request the inclusion of the required provision via bilateral negotiations</p> <p>To this end, Brunei Darussalam should put a plan in place on how it envisages updating these treaties to include the required provision.</p> <p>In addition, Brunei Darussalam should maintain its stated intention to include the required provision in all future tax treaties.</p>

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

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

77. 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

78. 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. Brunei Darussalam provided its MAP statistics pursuant to the MAP Statistics Reporting Framework within the given deadline, and it reported it has not been involved in any MAP cases so far. As Brunei Darussalam has not been involved in any MAP cases, it was not necessary to match its statistics with its treaty partners.

Monitoring of MAP statistics

79. Brunei Darussalam does not have a system in place with its treaty partners that communicates, monitors and manages with its treaty partners the MAP caseload, which can be explained by the fact that Brunei Darussalam was never involved in a MAP case.

Analysis of Brunei Darussalam’s MAP caseload

80. Brunei Darussalam has not been involved in any MAP cases during the Review Period.

Overview of cases closed during the Statistics Reporting Period

81. Brunei Darussalam has not been involved in any MAP cases during the Review Period.

Average timeframe needed to resolve MAP cases

82. Brunei Darussalam has not been involved in any MAP cases during the Review Period.

Peer input

83. No peer input was provided.

Anticipated modifications

84. Despite not having received any MAP requests, any future MAP statistics will be compiled by the International Unit of Revenue Division within Brunei Darussalam’s Ministry of Finance and Economy. Brunei Darussalam indicated that this unit will be responsible for monitoring MAP cases inventory, new MAP requests, the outcomes as well as the times needed to resolve MAP cases.

Conclusion

	Areas for improvement	Recommendations
[C.2]	As there were no post-2015 MAP cases to resolve it was therefore at this stage not possible to evaluate whether Brunei Darussalam’s competent authority seeks to resolve MAP cases within an average time frame of 24 months.	

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

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

85. 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 Brunei Darussalam’s competent authority

86. Under Brunei Darussalam’s tax treaties, the competent authority function is assigned to the Minister of Finance and Economy or his authorised representative. This has been delegated to the Revenue Division of the Ministry of Finance and Economy. Brunei Darussalam reported that MAP cases will be handled by three people in the International Unit within the Revenue Division who are responsible for both other and attribution/allocation cases. Brunei Darussalam reported that these personnel are responsible for, inter alia, preparing, conducting and reviewing negotiations for tax treaties and establishing

international relations amongst ASEAN APEC, OECD, ATAIC, IMF and CATA members and jurisdictions. The employees are also responsible for processing and issuing certificates of residence, processing applications for tax relief and processing requests for exchange of tax information. Brunei Darussalam further reported that any necessary adjustments to the level of resources available in its competent authority will be handled by the management of the Revenue Division. Given that Brunei Darussalam has not yet been involved in any MAP cases, there has been no need for a monitoring mechanism to request more staff to handle MAP inventory.

87. Despite not having been involved in any MAP requests, Brunei Darussalam reported that staff are frequently sent overseas for training at MAP workshops organised by international organisations such as the OECD, the Asian Development Bank, and other similar institutions.

Monitoring mechanism

88. As discussed under element C.2, Brunei Darussalam’s competent authority has not yet been involved in any MAP cases, by which there were no MAP statistics available to analyse the pursued 24-month average.

Practical application

MAP statistics

89. As discussed under element C.2, Brunei Darussalam has not yet received any MAP requests, by which there were no MAP statistics available to analyse the pursued 24-month average.

Peer input

90. No peer input was provided.

Anticipated modifications

91. Brunei Darussalam stated that it will aim to close all future MAP cases within a 24 months from receiving the taxpayer’s complete application. Brunei Darussalam also reported that additional funding for MAP will be made available if there is such a need in the future.

Conclusion

	Areas for improvement	Recommendations
[C.3]	-	Brunei Darussalam should monitor whether the resources available for the competent authority function remain adequate in order to resolve future MAP cases in a timely, efficient and effective manner.

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

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

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

Functioning of staff in charge of MAP

93. Brunei Darussalam noted that the Revenue Division, which is the competent authority, is also responsible for the assessment process of taxation in Brunei Darussalam. However, Brunei Darussalam clarified that staff in charge of MAP are located in the international unit that is separate from the unit in charge of tax audits. Brunei Darussalam further reported that in practice the international unit would operate independently and would have the authority to resolve MAP cases without being dependent on the approval/direction of the tax administration personnel directly involved in the adjustment.

94. Brunei Darussalam clarified that any decisions on MAP will be based on the applicable tax treaty and that the process for entering into MAP agreements not influenced by policy considerations that Brunei Darussalam would like to see reflected in future amendments to the treaty.

Practical application

95. No peer input was provided.

Anticipated modifications

96. Brunei Darussalam indicated that it does not anticipate any modifications in relation to element C.4.

Conclusion

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

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

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

97. 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 Brunei Darussalam

98. As Brunei Darussalam has not yet received a MAP request, it reported that at the time of review performance indicators have not yet been set for the MAP office.

99. The Action 14 final report includes examples of performance indicators that are considered appropriate. These indicators are shown below in bullet form:

- 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).

100. Although Brunei Darussalam does not use any of these performance indicators, it reported that it does not use any performance indicators for staff in charge of MAP that are related to the outcome of MAP discussions in terms of the amount of sustained audit adjustments or maintained tax revenue. In other words, staff in charge of MAP is not evaluated on the basis of the material outcome of MAP discussions

Practical application

101. No peer input was provided.

Anticipated modifications

102. Brunei Darussalam reported that it would use the indicators that are considered appropriate by the Action 14 final report to assess the performance of employees who handle MAP cases in the future.

Conclusion

	Areas for improvement	Recommendations
[C.5]	-	Brunei Darussalam could follow its stated intention to consider using the examples of performance indicators mentioned in the Action 14 final report to evaluate staff in charge of the MAP processes for future MAP cases.

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

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

103. 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

104. Brunei Darussalam’s MAP profile clearly states that it has no domestic law limitations for including MAP arbitration in its tax treaties but that MAP arbitration is not currently available for the resolution of tax treaty related disputes in any of its tax treaties.

Practical application

105. Brunei Darussalam has not incorporated an arbitration clause in any of its 19 tax treaties as a final stage to the MAP.

Anticipated modifications

106. Brunei Darussalam indicated that it does not anticipate any modifications in relation to element C.6.

Conclusion

	Areas for improvement	Recommendations
[C.6]	-	-

References

OECD (2016), *BEPS Action 14 on More Effective Dispute Resolution Mechanisms – Peer Review Documents*, OECD/G20 Base Erosion and Profit Shifting Project, OECD, Paris. www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-mechanisms-peer-review-documents.pdf.

OECD (2019), *Model Tax Convention on Income and on Capital 2017 (Full Version)*, OECD Publishing, Paris, <https://doi.org/10.1787/g2g972ee-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.

107. 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

108. Brunei Darussalam reported that under Chapter 35 of its Income Tax Act, taxpayers may be assessed within the year of assessment or within six years after the expiration thereof. In practice, Brunei Darussalam indicated that all MAP cases will be implemented notwithstanding these time limits in its domestic laws.

109. Brunei Darussalam further reported that when a MAP agreement is reached, its competent authority will inform the taxpayer in writing of the outcome within one month of reaching agreement. Upon receipt of the letter, the taxpayer will have to decide and then inform Brunei Darussalam's competent authority in writing that it accepts the agreement. Brunei Darussalam reported that although taxpayers are allowed to reject the outcome, they are not allowed to choose which part of an agreed outcome it would like to be implemented as such an agreement must be accepted in its entirety. Brunei Darussalam further noted that if any interest or penalties were imposed in a jurisdiction in connection with the taxation that is the subject of the MAP, such agreement may address whether any refund of such interest or penalties might be appropriate. Brunei Darussalam stated that if the taxpayer accepts the agreement, then its competent authority will work with the other competent to finalise the implementation of the agreement in accordance with the applicable tax treaty.

110. Brunei Darussalam's MAP guidance contains a section on implementation where all of the above information can also be found. In addition, Brunei Darussalam's MAP guidance states that its Ministry of Finance reserves the right to propose to the competent authority of the treaty partner to terminate MAP case processes. It further states that a MAP case can be terminated "when retrieval of documents necessary for MAP is not possible due a lapse of time". Brunei Darussalam clarified that under its Income Tax Act, companies carrying business are required to keep and retain in safe custody sufficient records for a period of seven years from the year of assessment to which an income relates to enable the companies income and allowable deduction under the Income Tax Act to be readily ascertained by the Collector of the Income tax or its authorised representatives. Therefore, there is a risk of non-implementation of MAP agreements after this period of time.

Practical application

111. No peer input was provided.

Anticipated modifications

112. Brunei Darussalam indicated that it does not anticipate any modifications in relation to element D.1.

Conclusion

	Areas for improvement	Recommendations
	As there was no MAP agreement reached during the Review Period, it was not yet possible to assess whether Brunei Darussalam would have implemented all MAP agreements thus far.	
[D.1]	There is a risk of non-implementation of MAP agreements if retrieval of relevant documents is no longer possible.	Brunei Darussalam should ensure that future MAP agreements are implemented if the conditions for such implementation are fulfilled.

[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.

113. Delays in implementing 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

114. As discussed under element D.1., Brunei Darussalam reported that it notifies the taxpayer of a MAP agreement within one month of a MAP agreement being reached. Brunei Darussalam noted that it would send a reminder letter if no response is received from the taxpayer within one month from the date the query letter is issued. Brunei Darussalam did not report any other applicable timeframes regarding the implementation process.

Practical applications

115. No peer input was provided.

Anticipated modifications

116. Brunei Darussalam indicated that although it has not yet received any MAP requests it will strive to implement future MAP agreements as soon as possible.

Conclusion

	Areas for improvement	Recommendations
[D.2]	As there was no MAP agreement reached during the Review Period that needed to be implemented by Brunei Darussalam, it was not yet possible to assess whether Brunei Darussalam would have implemented all MAP agreements on a timely basis thus far.	

[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.

117. 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 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 Brunei Darussalam’s tax treaties

118. As discussed under element D.1, Brunei Darussalam’s domestic legislation includes a statute of limitations of six years for implementing MAP agreements, unless overridden by tax treaties. In practice, however, Brunei Darussalam indicated that all MAP cases will be implemented notwithstanding any time limits in its domestic laws.

119. Out of Brunei Darussalam’s 19 tax treaties, 15 contain a provision 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. Furthermore, one tax treaty contains the alternative provision in Article 9(1), setting a time limit for making transfer pricing adjustments. The remaining three tax treaties do not contain any provision based on Article 25(2), second sentence, of the OECD Model Tax Convention at all or the alternative provisions of Article 9(1) and 7(2).

Anticipated modifications

Bilateral modifications

120. For those treaties, which do not contain a provision equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention, Brunei Darussalam reported it will strive to update them via bilateral negotiations to be compliant with element D.3. Brunei Darussalam reported that it is currently reviewing the possibility to sign the Multilateral Instrument in order to meet the BEPS Action 14 Minimum Standard. Brunei Darussalam also reported that it would look to amend the tax treaties bilaterally, with all its treaty partners and that the pace of renegotiation will depend on the response and communication methods used by both parties. In addition, Brunei Darussalam reported it will seek to include Article 25(2), second sentence, of the OECD Model Tax Convention in all of its future tax treaties.

Peer input

121. No peer input was provided.

Conclusion

	Areas for improvement	Recommendations
[D.3]	Four out of 19 tax treaties contain neither a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention nor both alternative provisions provided for in Article 9(1) and Article 7(2).	Where treaties do not contain the equivalent of Article 25(2), second sentence of the OECD Model Tax Convention or both alternatives, Brunei Darussalam should request the inclusion of the required provision via bilateral negotiations or be willing to accept the inclusion of both alternative provisions. To this end, Brunei Darussalam should put a plan in place on how it envisages updating these treaties to include the required provision.
		In addition, Brunei Darussalam should maintain its stated intention to include the required provision, or be willing to accept the inclusion of both alternatives provisions, in all future tax treaties.

References

OECD (2016), *BEPS Action 14 on More Effective Dispute Resolution Mechanisms – Peer Review Documents*, OECD/G20 Base Erosion and Profit Shifting Project, OECD, Paris. www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-mechanisms-peer-review-documents.pdf.

OECD (2019), *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
Part A: Preventing disputes		
[A.1]	Two out of 19 tax treaties do not contain a provision that is equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention.	Where treaties do not contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax, Brunei Darussalam should request the inclusion of the required provision via bilateral negotiations. To this end, Brunei Darussalam should put a plan in place on how it envisages updating these treaties to include the required provision.
	-	In addition, Brunei Darussalam should maintain its stated intention to include the required provision in all future tax treaties.
[A.2]	-	-
Part B: Availability and access to MAP		
[B.1]	One of 19 tax treaties does not contain a MAP provision at all, whereby there is no provision equivalent to the first and second sentence of Article 25(1) of the OECD Model Tax Convention.	Where treaties do not contain the equivalent of Article 25(1) of the OECD Model Tax Convention, Brunei Darussalam should request the inclusion of the required provision via bilateral negotiations. This concerns both: <ul style="list-style-type: none"> • a provision that is equivalent to Article 25(1), first sentence of the OECD Model Tax Convention either: <ul style="list-style-type: none"> a. As amended in the Action 14 final report; or b. As it read prior to the adoption of Action 14 final report; and • a provision that allows taxpayers to submit a MAP request within a period of no less than three years as from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty.
	Two out of 19 tax treaties do not contain the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention, as the timeline to file a MAP request is shorter than three years from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty.	Where treaties do not contain the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention, Brunei Darussalam should request the inclusion of the required provision via bilateral negotiations.
		To this end, Brunei Darussalam should put a plan in place on how it envisages updating these treaties to include the required provision. In addition, Brunei Darussalam should maintain its stated intention to include Article 25(1) of the OECD Model Tax Convention as amended in the Action 14 final report in all future tax treaties.

	Areas for improvement	Recommendations
[B.2]	All tax treaties do not contain a provision equivalent to Article 25(1) of the OECD Model Tax Convention as changed by the Action 14 final report, allowing taxpayers to submit a MAP request to the competent authority of either treaty partners. No documented bilateral consultation or notification process is in place, which allows the other competent authority concerned to provide its views on the case when the taxpayer's objection raised in the MAP request is considered not to be justified.	Brunei Darussalam should without further delay document its notification process and provide in that document rules of procedure on how that process should be applied in practice, including the steps to be followed and timing of these steps. Furthermore, Brunei Darussalam should apply its notification process for future cases in which its competent authority considered the objection raised in a MAP request not to be justified and when the tax treaty concerned does not contain Article 25(1) of the OECD Model Tax Convention as amended by the Action 14 final report.
[B.3]	Although Brunei Darussalam reported that it will provide access to MAP in transfer pricing cases, it did not receive any MAP request for such cases during the Review Period. Brunei Darussalam is therefore recommended to follow its policy and grant access to MAP in such cases.	
[B.4]	Brunei Darussalam reported it will give access to MAP in cases concerning whether the conditions for the application of a treaty anti-abuse provision have been met or whether the application of a domestic law anti-abuse provision is in conflict with the provisions of a treaty. Its competent authority, however, did not receive any MAP requests of this kind from taxpayers during the Review Period. Brunei Darussalam is therefore recommended to follow its policy and grant access to MAP in such cases.	
[B.5]	Brunei Darussalam reported it will give access to MAP in cases where the tax authority and the taxpayer have entered into an audit settlement. Its competent authority, however, did not receive any MAP requests of this kind from taxpayers during the Review Period. Brunei Darussalam is therefore recommended to follow its policy and grant access to MAP when such cases surface.	
[B.6]	Brunei Darussalam reported it will give access to MAP in cases where taxpayers have complied with Brunei Darussalam's information and documentation requirements for MAP requests. Its competent authority, however, did not receive any MAP requests from taxpayers during the Review Period. Brunei Darussalam is therefore recommended to follow its policy and grant access to MAP when it receives a request that includes the required information and documentation.	
[B.7]	Two out of 19 tax treaties do not contain a provision that is equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention.	Where treaties do not contain the equivalent of Article 25(3), second sentence, of the OECD Model Tax, Brunei Darussalam should request the inclusion of the required provision via bilateral negotiations. To this end, Brunei Darussalam should put a plan in place on how it envisages updating these treaties to include the required provision.
	-	In addition, Brunei should maintain its stated intention to include the required provision in all future tax treaties.
[B.8]	MAP guidance is comprehensive and available, but some further clarity could be provided. In particular, the guidance could cause confusion as it indicates that a MAP request will only be accepted if the issue is not one that Brunei Darussalam and/or the treaty partner's competent authority have decided, as a matter of policy, not to consider while Brunei Darussalam clarified that this concerns issues that are found not to be related to the relevant tax treaty.	Although not required by the Action 14 Minimum Standard, in order to further improve the level of details of its MAP guidance Brunei Darussalam could consider including information on: <ul style="list-style-type: none"> • the issue(s) that Brunei Darussalam and/or the treaty partner's competent authority have decided, as a matter of policy, not to consider and clarify that this concerns issues that are found not to be related to the relevant tax treaty; • Whether MAP is available regarding: (i) transfer pricing cases, (ii) the application of anti-abuse provisions, (iii) multilateral disputes and (iv) bona fide foreign-initiated self-adjustments • Whether taxpayers can request for the multi-year resolution of recurring issues through MAP • The possibility of suspension of tax collection during the course of a MAP

	Areas for improvement	Recommendations
[B.9]	-	As it has thus far made its MAP guidance available and easily accessible and published its MAP profile, Brunei Darussalam should ensure that future updates to the MAP guidance continue to be publicly available and easily accessible and that its MAP profile published on the shared public platform is updated if needed.
[B.10]	-	-
Part C: Resolution of MAP cases		
[C.1]	One out of 19 tax treaties does not contain a provision that is equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention.	Where the treaty does not contain the equivalent of Article 25(2), first sentence, of the OECD Model Tax, Brunei Darussalam should request the inclusion of the required provision via bilateral negotiations To this end, Brunei Darussalam should put a plan in place on how it envisages updating this treaty to include the required provision.
		In addition, Brunei Darussalam should maintain its stated intention to include the required provision in all future tax treaties.
[C.2]	As there were no post-2015 MAP cases to resolve it was therefore at this stage not possible to evaluate whether Brunei Darussalam's competent authority seeks to resolve MAP cases within an average time frame of 24 months.	
[C.3]	-	Brunei Darussalam should monitor whether the resources available for the competent authority function remain adequate in order to resolve future MAP cases in a timely, efficient and effective manner.
[C.4]	-	Brunei Darussalam should ensure that its competent authority continues to have the authority, and uses that authority in practice, to resolve MAP cases without being dependent on approval or direction from the tax administration personnel directly involved in the adjustment at issue and absent any policy considerations that Brunei Darussalam would like to see reflected in future amendments to the treaty.
[C.5]	-	Brunei Darussalam could follow its stated intention to consider using the examples of performance indicators mentioned in the Action 14 final report to evaluate staff in charge of the MAP processes for future MAP cases.
[C.6]	-	-
Part D: Implementation of MAP agreements		
[D.1]	As there was no MAP agreement reached during the Review Period, it was not yet possible to assess whether Brunei Darussalam would have implemented all MAP agreements thus far.	
	There is a risk of non-implementation of MAP agreements if retrieval of relevant documents is no longer possible.	Brunei Darussalam should ensure that future MAP agreements are implemented if the conditions for such implementation are fulfilled.
[D.2]	As there was no MAP agreement reached during the Review Period that needed to be implemented by Brunei Darussalam, it was not yet possible to assess whether Brunei Darussalam would have implemented all MAP agreements on a timely basis thus far.	

	Areas for improvement	Recommendations
[D.3]	Four out of 19 tax treaties contain neither a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention nor both alternative provisions provided for in Article 9(1) and Article 7(2).	<p>Where treaties do not contain the equivalent of Article 25(2), second sentence of the OECD Model Tax Convention or both alternatives, Brunei Darussalam should request the inclusion of the required provision via bilateral negotiations or be willing to accept the inclusion of both alternative provisions.</p> <p>To this end, Brunei Darussalam should put a plan in place on how it envisages updating these treaties to include the required provision.</p>
		In addition, Brunei Darussalam should maintain its stated intention to include the required provision, or be willing to accept the inclusion of both alternatives provisions, in all future tax treaties.

Annex A

Tax treaty network of Brunei Darussalam

		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.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?	Inclusion Art. 25(1) first sentence? If yes, submission to either competent authority? (new Art. 25(1), first sentence)	Inclusion Art. 25(1) second sentence? If no, please state reasons	Inclusion Art. 9(2) If no, will your CA provide access to MAP in TP cases?	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?	Inclusion Art. 25(2) first sentence?	Inclusion Art. 25(2) second sentence? If no, alternative provision in Art. 7 & 9 OECD MTC?	Inclusion Art. 25(3) first sentence?	Inclusion Art. 25(3) second sentence?	Inclusion arbitration provision?
	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	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
Bahrain	Y	O	Y	Y	i	Y	Y	Y	Y	N
Cambodia	Y	O	Y	Y	i	Y	Y	Y	Y	N
China (People’s Republic of)	Y	O	Y	Y	i	Y	Y	Y	Y	N
Hong Kong (China)	Y	O	Y	Y	i	Y	Y	Y	Y	N
Indonesia	Y	O	Y	Y	i	Y	N	Y	Y	N

		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.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?	Inclusion Art. 25(1) first sentence? If yes, submission to either competent authority? (new Art. 25(1), first sentence)	Inclusion Art. 25(1) second sentence? If no, please state reasons	Inclusion Art. 9(2) If no, will your CA provide access to MAP in TP cases?	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?	Inclusion Art. 25(2) first sentence?	Inclusion Art. 25(2) second sentence? If no, alternative provision in Art. 7 & 9 OECD MTC?	Inclusion Art. 25(3) first sentence?	Inclusion Art. 25(3) second sentence?	Inclusion arbitration provision?
Japan	Y	O	Y	i	i	Y	Y	Y	Y	N
Korea	Y	O	Y	Y	i	Y	Y	Y	Y	N
Kuwait	Y	O	Y	Y	i	Y	Y	Y	Y	N
Laos	Y	O	Y	Y	i	Y	Y	Y	Y	N
Luxembourg	Y	O	Y	Y	i	Y	Y	Y	Y	N
Malaysia	Y	O	Y	i	i	Y	N	Y	Y	N
Oman	Y	O	ii	Y	i	Y	Y	Y	N	N
Pakistan	Y	O	Y	Y	i	Y	Y	Y	Y	N
Qatar	Y	O	ii	i	i	Y	N	Y	Y	N
Singapore	Y	O	Y	i	i	Y	Y	Y	Y	N
Tajikistan	N	O	Y	Y	i	Y	Y	Y	Y	N
United Arab Emirates	Y	O	Y	Y	i	Y	Y	Y	Y	N
United Kingdom	Y	N	iv	N/A	i	N	N	N	N	N
Viet Nam	Y	O	Y	Y	i	Y	Y	Y	Y	N

Annex B

MAP statistics reporting for pre-2016 cases

2016 MAP statistics													
Category of cases	No. of pre-2016 cases in MAP inventory on 1 January 2016	Number of pre-2016 cases closed during the reporting period by outcome										No. of pre-2016 cases remaining in on MAP inventory on 31 December 2016	Average time taken (in months) for closing pre-2016 cases during the reporting period
		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	0	0	0	0	0	0	0	0	0	0	0	0	N/A
Others	0	0	0	0	0	0	0	0	0	0	0	0	N/A
Total	0	0	0	0	0	0	0	0	0	0	0	0	N/A

2017 MAP statistics													
Category of cases	No. of pre-2016 cases in MAP inventory on 1 January 2017	Number of pre-2016 cases closed during the reporting period by outcome										No. of pre-2016 cases remaining in on MAP inventory on 31 December 2017	Average time taken (in months) for closing pre-2016 cases during the reporting period
		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	0	0	0	0	0	0	0	0	0	0	0	0	N/A
Others	0	0	0	0	0	0	0	0	0	0	0	0	N/A
Total	0	0	0	0	0	0	0	0	0	0	0	0	N/A

2018 MAP statistics													
Category of cases	No. of pre-2016 cases in MAP inventory on 1 January 2018	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 2018	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	0	0	0	0	0	0	0	0	0	0	0	0	N/A
Others	0	0	0	0	0	0	0	0	0	0	0	0	N/A
Total	0	0	0	0	0	0	0	0	0	0	0	0	N/A

Annex C

MAP statistics reporting for post-2015 cases

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

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

2018 MAP statistics														
Category of cases	No. of post-2015 cases in MAP inventory on 1 January 2018	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 2018	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	0	0	0	0	0	0	0	0	0	0	0	0	N/A
Others	0	0	0	0	0	0	0	0	0	0	0	0	0	N/A
Total	0	0	0	0	0	0	0	0	0	0	0	0	0	N/A

Glossary

Action 14 Minimum Standard	The minimum standard as agreed upon in the final report on Action 14: Making Dispute Resolution Mechanisms More Effective
MAP Guidance	Mutual Agreement Procedure Guidelines
MAP Statistics Reporting Framework	Rules for reporting of MAP statistics as agreed by the FTA MAP Forum
Multilateral Instrument	Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting
OECD Model Tax Convention	OECD Model Tax Convention on Income and on Capital as it read on 21 November 2017
OECD Transfer Pricing Guidelines	OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations
Pre-2016 cases	MAP cases in a competent authority’s inventory that are pending resolution on 31 December 2015
Post-2015 cases	MAP cases that are received by a competent authority from the taxpayer on or after 1 January 2016
Review Period	Period for the peer review process that started on 1 January 2016 and ended on 31 December 2017
Statistics Reporting Period	Period for reporting MAP statistics that started on 1 January 2016 and that ended on 31 December 2018
Terms of Reference	Terms of reference to monitor and review the implementing of the BEPS Action 14 Minimum Standard to make dispute resolution mechanisms more effective

OECD/G20 Base Erosion and Profit Shifting Project

Making Dispute Resolution More Effective – MAP Peer Review Report, Brunei Darussalam (Stage 1)

INCLUSIVE FRAMEWORK ON BEPS: ACTION 14

Under Action 14, countries have committed to implement a minimum standard to strengthen the effectiveness and efficiency of the mutual agreement procedure (MAP). The MAP is included in Article 25 of the OECD Model Tax Convention and commits countries to endeavour to resolve disputes related to the interpretation and application of tax treaties. The Action 14 Minimum Standard has been translated into specific terms of reference and a methodology for the peer review and monitoring process. The minimum standard is complemented by a set of best practices. The peer review process is conducted in two stages. Stage 1 assesses countries against the terms of reference of the minimum standard according to an agreed schedule of review. Stage 2 focuses on monitoring the follow-up of any recommendations resulting from jurisdictions' stage 1 peer review report. This report reflects the outcome of the stage 1 peer review of the implementation of the Action 14 Minimum Standard by Brunei Darussalam.

Consult this publication on line at <https://doi.org/10.1787/87e2abc5-en>.

This work is published on the OECD iLibrary, which gathers all OECD books, periodicals and statistical databases. Visit www.oecd-ilibrary.org for more information.

