

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



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

INCLUSIVE FRAMEWORK ON BEPS: ACTION 14



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Foreword

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

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

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 BEPS planning strategies that rely on outdated rules or on poorly co-ordinated domestic measures will be rendered ineffective.

Implementation is now the focus of this work. The BEPS package is designed to be implemented via changes in domestic law and practices, and in tax treaties. With the negotiation of a multilateral instrument (MLI) having been finalised in 2016 to facilitate the implementation of the treaty related BEPS measures, over 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.

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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

Jersey has a modest tax treaty network with almost 30 tax treaties. Jersey has a newly established MAP programme and has no experience with resolving MAP cases. During the 2016-18 period, Jersey has only been involved in one “other” MAP case that was submitted to its treaty partner and resolved via domestic remedy in its treaty partner’s jurisdiction. Overall Jersey meets almost all the elements of the Action 14 Minimum Standard. Where it has deficiencies, Jersey is working to address most of them.

All but one of Jersey’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 more than 10% of its tax treaties do not contain the equivalent of Article 25(2), first sentence of the OECD Model Tax Convention that requires the competent authority who received the MAP request from a taxpayer to endeavour, if the objection of the taxpayer appears to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the MAP case by mutual agreement.

In order to be fully compliant with all four key areas of an effective dispute resolution mechanism under the Action 14 Minimum Standard, Jersey needs to amend and update a certain number of its tax treaties. In this respect, Jersey signed and ratified the Multilateral Instrument. Through this instrument the majority of the relevant tax treaties have been or will be modified to fulfil the requirements under the Action 14 Minimum Standard. Where treaties will not be modified, upon entry into force of this Multilateral Instrument for the treaties concerned, Jersey reported that it intends to update all of its tax treaties via bilateral negotiations to be compliant with the requirements under the Action 14 Minimum Standard and that it contacted all relevant treaty partners for this purpose. Furthermore, Jersey opted for part VI of the Multilateral Instrument concerning the introduction of a mandatory and binding arbitration provision in tax treaties.

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

Jersey meets almost all requirements regarding the availability and access to MAP under the Action 14 Minimum Standard. It provides access to MAP in all eligible cases although it has since 1 January 2016 not received any MAP requests from taxpayers. However, for those tax treaties that do not contain a filing period for MAP requests, there is a risk that due to the Jersey’s domestic time limits access to MAP is not available even if the taxpayer filed its MAP request within three years as from the first notification of the action resulting in taxation not in accordance with the tax treaty. Furthermore, Jersey has in place a documented bilateral consultation process for those situations in which its competent authority considers the objection raised by taxpayers in a MAP request as not justified. Finally, Jersey has clear and comprehensive guidance on the availability of MAP and how it applies this procedure in practice.

Concerning the average time needed to close MAP cases, the MAP statistics for Jersey for the period 2016-18 are as follows:

2016-18	Opening inventory 1/1/2016	Cases started	Cases closed	End inventory 31/12/2018	Average time to close cases (in months)*
Attribution/allocation cases	0	0	0	0	n.a.
Other cases	0	1	1	0	6.50
Total	0	1	1	0	6.50

* The average time taken for resolving MAP cases for post-2015 cases follows the MAP Statistics Reporting Framework. There were no pre-2016 cases pending on 1 January 2016.

As mentioned previously, during the 2016-18 period, Jersey has only been involved in one “other” MAP case that was submitted to its treaty partner and resolved via domestic remedy in the treaty partner’s jurisdiction. Jersey meets in principle all of the other 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 Jersey meets the Action 14 Minimum Standard as regards the implementation of MAP agreements. Jersey has a domestic statute of limitation for implementation of MAP agreements, for which there is a risk that such agreements cannot be implemented where the applicable tax treaty does not contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention.

Introduction

Available mechanisms in Jersey to resolve tax treaty-related disputes

Jersey has entered into 29 tax treaties on income (and/or capital), all of which are in force.¹ These 29 treaties are being applied to the same number of jurisdictions. All but one of these treaties provide for a mutual agreement procedure for resolving disputes on the interpretation and application of the provisions of the tax treaty. In addition, eight of the 29 treaties provide for an arbitration procedure as a final stage to the mutual agreement procedure.

In Jersey, the MAP competent authority function is delegated to three people within Jersey's tax administration. The competent authority of Jersey currently has seven employees who, due to Jersey's very small MAP caseload, deal with other tasks, in particular, the exchange of information.

Jersey issued guidance on the governance and administration of the mutual agreement procedure (“MAP”) on the webpage of the government of Jersey, which is available at:

<https://www.gov.je/TaxesMoney/InternationalTaxAgreements/DoubleTaxationProcedure/Pages/TreatyDisputes.aspx#anchor-1>

Recent developments in Jersey

Jersey reported that it updated its model tax treaty to reflect the Action 14 Minimum Standard in 2017 and analysed late 2017 all its tax treaties for compliance with the Action 14 Minimum Standard. Jersey reported it is currently conducting tax treaty negotiations with 14 jurisdictions.

Furthermore, on 7 June 2017, Jersey signed the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (“**Multilateral Instrument**”), to adopt, where necessary, modifications to the MAP article under its tax treaties in order to be compliant with the Action 14 Minimum Standard in respect of all relevant tax treaties. Jersey deposited its instrument of ratification of this instrument on 15 December 2017, following which the Multilateral Instrument for Jersey entered into force on 1 July 2018.

Jersey further reported that it analysed the effects of the Multilateral Instrument, and where treaties will not be modified by the Multilateral Instrument, Jersey reported that it intends to update them through future bilateral negotiations. In this regard, Jersey reported that it contacted all relevant treaty partners to include the required provisions to comply with the Action 14 Minimum Standard in January 2018.

Basis for the peer review process

The peer review process entails an evaluation of Jersey’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 Jersey, its peers and taxpayers. The questionnaires for the peer review process were sent to Jersey and the peers on 27 March 2019.

The period for evaluating Jersey’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 Jersey’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 Jersey 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 Jersey’s tax treaties regarding the mutual agreement procedure.

In total two peers provided input: Australia and the United Kingdom. Out of these two peers, one had a MAP case with Jersey that started on or after 1 January 2016. This latter peer represents all of post-2015 MAP cases in Jersey’s inventory that started in 2016, 2017 or 2018. This peer reported having had limited interactions with Jersey.

Jersey provided informative answers in its questionnaire, which was submitted with significant delay. Jersey was responsive in the course of the drafting of the peer review report by responding to requests for additional information with some delay. In addition, Jersey provided the following information:

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

With respect to the MAP statistics, Jersey, however, did not report its MAP statistics for the year 2017 until the peer review process was initiated in 2019. For the years 2016 and 2018 such statistics were provided in time. These statistics for the whole period from 2016 to 2018 are taken into account in the report.

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

Overview of MAP caseload in Jersey

The analysis of Jersey’s MAP caseload relates to the period starting on 1 January 2016 and ending on 31 December 2018 (“**Statistics Reporting Period**”). According to the statistics provided by Jersey, its MAP caseload during this period was as follows:

2016-18	Opening inventory 1/1/2016	Cases started	Cases closed	End Inventory 31/12/2018
Attribution/allocation cases	0	0	0	0
Other cases	0	1	1	0
Total	0	1	1	0

General outline of the peer review report

This report includes an evaluation of Jersey’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 Apart from analysing Jersey’s legal framework and its administrative practice, the report also incorporates peer input. Furthermore, the report depicts the changes adopted and plans shared by Jersey to implement elements of the Action 14 Minimum Standard where relevant. The conclusion of each element identifies areas for improvement (if any) and provides recommendations on how the specific areas 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 Jersey 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 Jersey has entered into are available at: <https://www.gov.je/tax/money/internationaltaxagreements/doubletaxation/Pages/index.aspx>. Reference is made to Annex A for the overview of Jersey’s tax treaties. Furthermore, the 29 tax treaties Jersey has entered into include treaties with Denmark, the Faroe Islands, Finland, Greenland, Iceland, Norway and Sweden. With these seven jurisdictions, Jersey has entered into separate treaties that have a limited scope of application, one of which relates to transfer pricing and one to certain categories of income of individuals. In this situation, the number of such treaties is regarded as one for the purpose of this peer review report.
2. Available at www.oecd.org/tax/dispute/Jersey-Dispute-Resolution-Profile.pdf.
3. The MAP statistics of Jersey 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-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 Jersey's tax treaties

2. Out of Jersey's 29 tax treaties, 26 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. One treaty does not include such a provision at all, whereas two treaties only covers any difficulties or doubts arising as to the application of the treaty, and the term "interpretation" is missing. For this reason, these three treaties are considered as not containing the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention.

3. Jersey 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. However, it clarified that it may not be possible to discuss an issue with a treaty partner that is unwilling to participate in such a discussion.

Anticipated modifications

Multilateral Instrument

4. Jersey signed the Multilateral Instrument and deposited its instrument of ratification on 15 December 2017. The Multilateral Instrument for Jersey entered into force on 1 July 2018.

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

6. In regard of the three tax treaties identified above that are considered not to contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention, Jersey listed none of them as a covered tax agreement under the Multilateral Instrument. Therefore, at this stage, none of the three tax treaties identified above will be modified by the Multilateral Instrument to include the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention.

Bilateral modifications

7. Jersey reported that when the tax treaties that do not contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention will not be modified by the Multilateral Instrument, it intends to update them via bilateral negotiations with a view to be compliant with element A.1. In this regard, Jersey reported that it contacted all relevant treaty partners to include the required provision in its treaties in January 2018.

8. In addition, Jersey 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

9. For the three tax treaties identified that do not contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention, one peer reported that Jersey approached this peer regarding tax treaty negotiations in the first half of 2018. The other peers did not provide input.

Conclusion

	Areas for improvement	Recommendations
[A.1]	Three out of 29 tax treaties do not contain a provision that is equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention. These three treaties will not be modified by the Multilateral Instrument to include the required provision. With respect to these treaties, Jersey has reached out to its treaty partners to request the initiation of bilateral negotiations.	As the three treaties that do not contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention will not be modified via the Multilateral Instrument, Jersey should follow up on its requests for the inclusion of the required provision via bilateral negotiations. In addition, Jersey 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.

10. 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.

Jersey’s APA programme

11. Jersey does not have an APA programme, so there is no possibility for providing roll-back of bilateral APAs to previous years.

12. Peers provided no specific input in relation to element A.2.

Anticipated modifications

13. Jersey 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.

14. 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 Jersey's tax treaties

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

15. Out of Jersey's 29 tax treaties, two 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 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. Furthermore, 14 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.

16. The remaining 13 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 for transfer pricing adjustments, whereas the scope of the treaty also covers certain items of income concerning individuals.	2
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.	10

17. The two treaties in the second row of the table are 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 the scope of the MAP provision is limited to one type of dispute, whereas the treaty has a broader scope of application. These treaties are therefore not in line with this part of element B.1.

18. The ten treaties in the third row are considered as not having 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, all of these ten treaties are considered to be in line with this part of element B.1, since they do not contain a non-discrimination provision and only apply to residents of one of the states.

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

19. Out of Jersey's 29 tax treaties, 25 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.

20. The remaining four tax treaties that do not contain this 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)	1
Starting point being the first notification of a transfer pricing adjustment (MAP provision limited to transfer pricing cases), while the scope of the treaty is broader than transfer pricing cases	2

Practical application

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

21. As indicated above, Jersey's tax treaties generally allow the filing of a MAP request irrespective of domestic remedies. In this respect, paragraphs 2.7-2.9 of Jersey's MAP guidance clarifies that the submission of a MAP request does not prevent the taxpayer from pursuing domestic remedies and appeals.

22. The guidance further notes that where the taxpayer submits a MAP request, but the taxpayer is pursuing domestic tax remedies in either Jersey or the other jurisdiction, the MAP process will only be regarded as starting when domestic remedies are abandoned, suspended or concluded, and that its competent authority would accept a protective MAP request whilst the taxpayer is pursuing domestic remedies.

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

23. One of Jersey's tax treaties does not contain a filing period, which is the treaty that does not contain any MAP provision at all. Two of Jersey's tax treaties contain a filing period that applies to transfer pricing cases but no filing period relating to other cases, while the scope of application of the treaty is broader than transfer pricing cases. In this respect, Jersey reported that its domestic time limits would apply for the submission of MAP cases and that such domestic time limits expire five years after the end of the relevant tax year. This time period could expire earlier than three years after the first notification of the action resulting in taxation not in accordance with the tax treaty.

24. There is also a treaty that provides a shorter period to submit a MAP request than Article 25(1), second sentence of the OECD Model Tax Convention. Although section 2.14 of Jersey's MAP guidance clarifies that in such cases Jersey would accept the MAP requests until the end of the three years as from the first notification of the action resulting in taxation not in accordance with the tax treaty, this guidance will be revised to say the time limit will be as set out in the relevant tax treaty.

Anticipated modifications

Multilateral Instrument

25. Jersey signed the Multilateral Instrument and deposited its instrument of ratification on 15 December 2017. The Multilateral Instrument for Jersey entered into force on 1 July 2018.

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

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

27. With the ratification of the Multilateral Instrument, Jersey opted, pursuant to Article 16(4)(a)(i) of that instrument, to introduce in all of its tax treaties a provision that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention as

amended by the Action 14 final report, allowing taxpayers to submit a MAP request to the competent authority of either contracting state. In other words, where under the Jersey's tax treaties taxpayers currently have to submit a MAP request to the competent authority of the contracting state of which he is a resident, Jersey opted to modify these treaties allowing taxpayers to submit a MAP request to the competent authority of either contracting state. In this respect, Jersey listed ten of its 29 treaties as a covered tax agreement under the Multilateral Instrument and made, on the basis of Article 16(6)(a), for all of them the notification they contain a provision that is 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.

28. One of the ten relevant treaty partners is not a signatory to the Multilateral Instrument, whereas the remaining nine treaty partners have listed their treaty with Jersey as a covered tax agreement under that instrument and one of them reserved, pursuant to Article 16(5)(a), the right not to apply the first sentence of Article 16(1) to its existing tax treaties, with a view to allow taxpayers to submit a MAP request to the competent authority of either contracting state. Out of remaining eight treaty partners, seven listed their treaty with Jersey as having a provision that is 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.

29. With respect to these seven treaties, two treaty partners have already deposited their instrument of ratification of the Multilateral Instrument, following which the Multilateral Instrument has entered into force for the treaties between Jersey and these treaty partners, and therefore has modified these treaties to include the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention as amended by the Action 14 final report. For the remaining five treaties, the instrument will, upon entry into force for these treaties, modify them to include this equivalent.

30. Furthermore, for the remaining treaty, where the treaty partner did not make a notification on the basis of Article 16(6)(a), this treaty will be superseded by the Multilateral Instrument.

31. In view of the above and in relation to the three treaties identified in paragraphs 15 and 16 that are considered not to contain the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention as it read prior to the adoption of the final Action 14 final report, none of the three treaties will be modified via the Multilateral Instrument.

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

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

33. In regard of the four tax treaties identified in paragraph 19 above, Jersey listed one of these four treaties as a covered tax agreement under the Multilateral Instrument and for this treaty, and it made, pursuant to Article 16(6)(b)(i), a notification that it does not contain a provision described in Article 16(4)(a)(ii). The relevant treaty partner, being a signatory to the Multilateral Instrument, listed the treaty with Jersey as a covered tax agreement under

that instrument and also made such notification. Therefore, at this stage, one tax treaty will be modified by the Multilateral Instrument upon its entry into force for this treaty to include the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention.

Bilateral modifications

34. Jersey reported that when tax treaties do not contain the equivalent of Article 25(1) of the OECD Model Tax Convention, as it read prior to the adoption of the Action 14 final report, and will not be modified by the Multilateral Instrument, it intends to update them via bilateral negotiations with a view to be compliant with element B.1. In this regard, Jersey reported that it contacted all relevant treaty partners to include the required provision in its treaties in January 2018.

35. In addition, Jersey reported it will seek to include Article 25(1) of the OECD Model Tax Convention, as it reads after the adoption of the Action 14 final report, in all of its future tax treaties.

Peer input

36. For the four treaties identified that do not contain the equivalent of Article 25(1) of the OECD Model Tax Convention, one of the relevant peers reported that Jersey approached this peer to regarding tax treaty negotiations in the first half of 2018. The other peers did not provide input.

Conclusion

	Areas for improvement	Recommendations
[B.1]	Three out of 29 tax treaties do not contain a provision that is equivalent to Article 25(1), first sentence of the OECD Model Tax Convention. Since these treaties will not be modified by the Multilateral Instrument to include the required provision, Jersey has asked these treaty partners to commence bilateral negotiations to renegotiate this article.	<p>As the three treaties that do not contain the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention will not be modified by the Multilateral Instrument to include such equivalent, Jersey should follow up on its request for the inclusion of the required provision via bilateral negotiations.</p> <p>This concerns a provision that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention, either:</p> <ul style="list-style-type: none"> • as amended in the Action 14 final report; or • as it read prior to the adoption of the Action 14 final report, thereby including the full sentence of such provision. <p>In addition, Jersey 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.</p>
	Where tax treaties do not include a time limit for submission of a MAP request, applicable rules under domestic legislation may lead to a filing period of less than three years as from the first notification of the action resulting in taxation not in accordance with the provisions of a tax treaty.	Jersey should ensure that where its domestic time limits apply for filing of MAP requests, in the absence of a provision hereon in its tax treaties, such time limits do not prevent taxpayers from having access to MAP if a request thereto is made within a period of three years as from the first notification of the action resulting in taxation not in accordance with the provisions of a tax treaty.

[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).

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

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

Domestic bilateral consultation or notification process in place

38. As discussed under element B.1, out of Jersey's 29 treaties, two 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. As was also discussed under element B.1, two of the remaining 27 treaties have been modified by the Multilateral Instrument to include such equivalent, and another six will, upon entry into force, be modified or superseded by the Multilateral Instrument to allow taxpayers to submit a MAP request to the competent authority of either treaty partner.

39. Jersey reported that it has introduced a bilateral consultation process that allows the other competent authority concerned to provide its views on the case when Jersey's competent authority considers the objection raised in the MAP request not to be justified. Paragraph 3.4 of Jersey's MAP guidance contains a reference to the existence of such a bilateral consultation process and Jersey reported that the process is documented in its internal guidance, which specifies the steps of the process and the timing of these steps as well as the information that is provided to the other competent authority.

Practical application

40. Jersey reported that since 1 January 2016 it has not received any MAP requests from taxpayers. The 2016-18 MAP statistics submitted by Jersey shows that no case was closed with the outcome "objection not justified".

41. Peers provided no specific input in relation to element B.2.

Anticipated modifications

42. As previously discussed under element B.1, Jersey has ratified the Multilateral Instrument, *inter alia* with the intention to modify covered tax agreements to allow taxpayers to submit a MAP request to the competent authority of either contracting state. Where tax treaties will not be amended via the Multilateral Instrument, Jersey reported it will continue to apply its bilateral notification and consultation process when its competent authority considers the objection raised in a MAP request not to be justified.

43. Jersey indicated that it does not anticipate any modifications in relation to element B.2.

Conclusion

	Areas for improvement	Recommendations
[B.2]	There is a documented process in place to consult the other competent authority in cases where the objection raised in the MAP request was considered as being not justified. However, it was not possible to assess whether the consultation process is applied in practice because during the Review Period no such cases have occurred.	

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

Jurisdictions should provide access to MAP in transfer pricing cases.

44. 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

45. Out of Jersey's 29 tax treaties, 21 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, four do not contain a provision on associated enterprises at all.

46. Out of the remaining four treaties, one treaty does not contain a provision equivalent to Article 9(2), one treaty contains a provision that is based on Article 9(2) of the OECD Model Tax Convention, but does not contain the last part of the sentence stating that the competent authorities "shall if necessary consult each other" and the remaining two treaties contain a provision that is based on Article 9(2) of the OECD Model Tax Convention, but deviate from this provision because the granting of a corresponding adjustment could be read as only optional as the word "shall" is replaced by "may".

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

48. Jersey reported that paragraph 1.5 of its MAP guidance says MAP may be appropriate when a taxpayer is subject to additional tax in one tax jurisdiction because of a tax audit assessment, and the mutual agreement procedure would consider whether the audit assessment should be reduced or withdrawn or whether a corresponding adjustment (a reduction in profits/increase in losses) be allowed to the other taxpayer by the tax administration where the profits were originally recognised.

Application of legal and administrative framework in practice

49. Jersey reported that since 1 January 2016, it has not received any MAP requests from taxpayers and it has not denied access to MAP on the basis that the case concerned a transfer pricing case.

50. Peers provided no specific input in relation to element B.3.

Anticipated modifications

51. Jersey reported that it is in favour of including Article 9(2) of the OECD Model Tax Convention in its tax treaties where possible and that it will seek to include this provision in all of its future tax treaties. In that regard, Jersey signed the Multilateral Instrument, and ratified it on 15 of December 2017. The Multilateral Instrument for Jersey entered into force on 1 July 2018.

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

53. In regard of the four treaties identified in paragraph 46 above that are considered not to contain a provision that is equivalent to Article 9(2) of the OECD Model Tax Convention, Jersey listed two as a covered tax agreement under the Multilateral Instrument and included none of them in the list of treaties for which Jersey has, pursuant to Article 17(3), reserved the right not to apply Article 17(2) of the Multilateral Instrument.

54. Of the relevant two treaty partners, being a signatory to the Multilateral Instrument, listed its treaty with Jersey under that instrument. However, these two treaty partners have,

on the basis of Article 17(3), reserved the right not to apply Article 17(2) for its covered tax agreements. Therefore, at this stage, none of these three tax treaties identified above will be modified by the Multilateral Instrument to include the equivalent of Article 9(2) of the OECD Model Tax Convention.

55. Jersey 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]	Jersey reported that it will give access to MAP in transfer pricing cases. Its competent authority, however, did not receive any MAP requests for such cases during the Review Period. Jersey 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.

56. 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

57. None of Jersey's 29 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, the domestic law and/or administrative processes of Jersey 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.

58. Jersey reported that paragraph 1.5 of its MAP guidance clarifies that MAP may be appropriate when a taxpayer considers the application of a domestic law anti-abuse provision is in conflict with the provisions of the relevant tax treaty and that the mutual agreement procedure will determine what is appropriate in the circumstances.

Practical application

59. Jersey reported that since 1 January 2016 it has not denied access to MAP in cases in which there was a disagreement between the taxpayer and the tax authorities as to whether the conditions for the application of a treaty anti-abuse provision have been met, or as to whether the application of a domestic law anti-abuse provision is in conflict with the provisions of a tax treaty. However, no such cases in relation hereto were received since that date.

60. Peers provided no specific input in relation to element A.2.

Anticipated modifications

61. Jersey indicated that it does not anticipate any modifications in relation to element B.4.

Conclusion

	Areas for improvement	Recommendations
[B.4]	Jersey 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. Jersey 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.

62. 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 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***

63. Jersey reported that it is possible in Jersey for a taxpayer and the tax administration to enter into an audit settlement. Jersey reported that access to MAP will not be denied in cases where a taxpayer has entered into an audit settlement with the tax administration.

64. The guidance that explains the relationship between access to MAP and audit settlements is discussed in element B.10.

Administrative or statutory dispute settlement/resolution process

65. Jersey does not have an administrative or statutory dispute settlement/resolution process in place, which is independent from the audit and examination functions, which would allow Jersey to deny access to MAP for issues resolved through that process.

Practical application

66. Jersey reported that since 1 January 2016 it has not received any MAP requests from taxpayers, and it has not denied access to MAP for 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.

67. Peers provided no specific input in relation to element B.5.

Anticipated modifications

68. Jersey indicated that it does not anticipate any modifications in relation to element B.5.

Conclusion

	Areas for improvement	Recommendations
[B.5]	Jersey 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. Jersey 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.

69. 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

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

71. If not all required information/documentation is provided by the taxpayer, Jersey reported that the taxpayer would be asked to provide further information within a period of 2 months. Jersey clarified that if the taxpayer does not provide the requested information within this period the case will be closed and its competent authority would inform the other competent authority. If an incomplete submission of information is made, Jersey reported that it would allow the taxpayer a further period of two weeks to provide the missing information. If the information provided is considered incomplete and the case is denied access to MAP, Jersey reported that it would allow the other competent authority

the chance to review what has been provided and to challenge Jersey’s conclusion that insufficient information had been provided. Finally, Jersey clarified that the taxpayer would also be at liberty to submit a new MAP request if the time limit in the relevant tax treaty has not expired.

Practical application

72. Jersey 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 from a taxpayer and has not denied access to MAP for cases where the taxpayer had not provided the required information or documentation.

73. Peers provided no specific input in relation to this element.

Anticipated modifications

74. Jersey indicated that it does not anticipate any modifications in relation to element B.6.

Conclusion

	Areas for improvement	Recommendations
[B.6]	Jersey reported it will give access to MAP in cases where taxpayers have complied with Jersey’s information and documentation requirements for MAP requests. Its competent authority, however, did not receive any MAP requests from taxpayers during the Review Period. Jersey 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.

75. 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 Jersey’s tax treaties

76. Out of Jersey’s 29 tax treaties, 16 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.

77. The remaining 13 treaties do not contain such equivalent, and they have a limited scope of application. This concerns tax treaties that only apply to a certain category of income or a certain category of taxpayers, whereby the structure and articles of the OECD Model Tax Convention are not followed. As these treaties were intentionally

negotiated with a limited scope, the inclusion of Article 25(3), second sentence, of the OECD Model Tax Convention would contradict the object and purpose of those treaties and such inclusion would also be inappropriate, as it would allow competent authorities the possibility to consult in cases that have intentionally been excluded from the scope of a tax treaty. For this reason, therefore, there is a justification not to contain Article 25(3), second sentence, of the OECD Model Tax Convention for those 13 treaties with a limited scope of application.

Anticipated modifications

78. Jersey reported it will seek to include Article 25(3), second sentence, of the OECD Model Tax Convention in all of its future tax treaties.

Conclusion

	Areas for improvement	Recommendations
[B.7]	-	Jersey 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.

79. 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.

Jersey's MAP guidance

80. Jersey's rules, guidelines and procedures are included in its MAP Guidance and are available at:

<https://www.gov.je/TaxesMoney/InternationalTaxAgreements/DoubleTaxationProcedure/Pages/TreatyDisputes.aspx>

81. 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. information on availability of arbitration

- f. relationship with domestic available remedies
 - g. access to MAP in cases of: (i) transfer pricing cases, (ii) the application of anti-abuse provisions, and (iii) bona fide foreign-initiated self-adjustments (iv) audit settlements and (v) multilateral disputes
 - h. implementation of MAP agreements (steps and timing of the steps including actions to be taken by the taxpayers)
 - i. rights and role of taxpayers in the process
 - j. suspension of tax collection
 - k. penalties.
82. The above-described MAP guidance of Jersey 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
83. Although the information included in Jersey's MAP guidance is detailed and comprehensive, various subjects are not specifically discussed in Jersey's MAP guidance. This concerns information on:
- whether taxpayers can request for the multi-year resolution of recurring issues through MAP
 - the consideration of interest charges in the MAP.

Information and documentation to be included in a MAP request

84. 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. Jersey'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

85. Jersey indicated that it would consider reflecting the following items when it updates its MAP guidance:

- Whether taxpayers can request for the multi-year resolution of recurring issues through MAP
- The consideration of interest charges in the MAP

Conclusion

	Areas for improvement	Recommendations
[B.8]	-	Although not required by the Action 14 Minimum Standard, in order to further improve the level of details of its MAP guidance Jersey could follow its stated intention to consider including the items listed above.

[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.

86. 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

87. The MAP guidance of Jersey is published and can be found at:

<https://www.gov.je/TaxesMoney/InternationalTaxAgreements/DoubleTaxationProcedure/Pages/TreatyDisputes.aspx>

88. This guidance was last updated in April 2019. As regards its accessibility, Jersey’s MAP guidance can easily be found on the website of Jersey’s public services website by searching for “double taxation” or “mutual agreement procedure” on such website.

MAP profile

89. The MAP profile of Jersey is published on the website of the OECD. This MAP profile is complete and often with detailed information. This profile includes external links that provide extra information and guidance.

Anticipated modifications

90. Jersey indicated that it will update its MAP profile to correct its answers.

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, Jersey 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.

91. 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

92. As previously discussed under B.5, the Jersey tax administration will enter into audit settlements with taxpayers.

93. Paragraph 2.5 of its MAP guidance clarifies that its competent authority does not prevent access to MAP where double taxation has arisen as a consequence of a tax audit (or enquiry) settlement between the taxpayer and Jersey's tax authority or the tax authority of the other jurisdiction.

94. Peers raised no issues with respect to the availability of audit settlements and the inclusion of information in Jersey's MAP guidance.

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

95. As previously mentioned under element B.5, Jersey 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. There is therefore no need to address the effects of such process in Jersey's MAP guidance.

96. Peers raised no issues with respect to an administrative or statutory dispute settlement/resolution process in Jersey, which can be clarified by the fact that such process is not in place in Jersey.

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

97. As Jersey has no internal administrative or statutory dispute settlement/resolution process in place, there is therefore no need to notify treaty partners of it.

Anticipated modifications

98. Jersey 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. Ibid. 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-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.

99. 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 Jersey’s tax treaties

100. Out of the Jersey’s 29 tax treaties, 25 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. Furthermore, three treaties do not contain such an equivalent at all. For the remaining treaty, the phrase “with a view to the avoidance of taxation which is not in accordance with the treaty” is missing. Four treaties do not therefore contain the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention.

Anticipated modifications

Multilateral Instrument

101. Jersey signed the Multilateral Instrument and deposited its instrument of ratification on 15 December 2017. The Multilateral Instrument for Jersey entered into force on 1 July 2018.

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

103. In regard of the four tax treaties identified above that are considered not to contain the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention, Jersey listed none of them as a covered tax agreement under the Multilateral Instrument. Therefore, at this stage, these four treaties will not be modified by the Multilateral Instrument to include the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention.

Bilateral modifications

104. Jersey further reported that when the tax treaties that do not contain the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention will not be modified by the Multilateral Instrument, it intends to update them via bilateral negotiations with a view to be compliant with element C.1. In this regard, Jersey reported that it contacted all relevant treaty partners to include the required provision in its treaties in January 2018.

105. In addition, Jersey 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

106. For the four treaties identified that do not contain the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention, one of the relevant peers reported that Jersey approached this peer regarding tax treaty negotiations in the first half of 2018. The other peers did not provide input.

Conclusion

	Areas for improvement	Recommendations
[C.1]	Four out of 29 tax treaties do not contain a provision that is equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention. These four treaties will not be modified by the Multilateral Instrument to include the required provision. With respect to these treaties, Jersey has reached out to its treaty partners to request the initiation of bilateral negotiations.	As the four treaties that do not contain the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention will not be modified via the Multilateral Instrument, Jersey should follow up on its requests for the inclusion of the required provision via bilateral negotiations. In addition, Jersey should maintain its stated intention to include the required provision in all future tax treaties.

[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).

107. 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 an appropriate time period to resolve MAP cases on average.

Reporting of MAP statistics

108. Statistics regarding all tax treaty related disputes concerning Jersey are published on the website of the OECD as of 2016.¹

109. 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.

110. For the years 2016 and 2018, Jersey provided its MAP statistics pursuant to the MAP Statistics Reporting Framework within the given deadline. For the year 2017, MAP statistics were only submitted after the commencement of the peer review process for Jersey. Jersey clarified that it only concerned one case for the year 2017 and that the delay in reporting was principally due to a significant delay by its MAP partner in notifying Jersey of this case.

111. The statistics discussed below include both pre-2016 and post-2015 cases and the full statistics are attached to this report as Annex B and Annex C respectively² and should be considered jointly to understand the MAP caseload of Jersey. Jersey reported that it had only one MAP partner, but did not indicate whether it has contacted this partner with a view to matching the statistics. However, based on the information provided by Jersey’s MAP partners, its post-2015 MAP statistics for the years 2016-18 actually match those of its treaty partner as reported by the latter.

Monitoring of MAP statistics

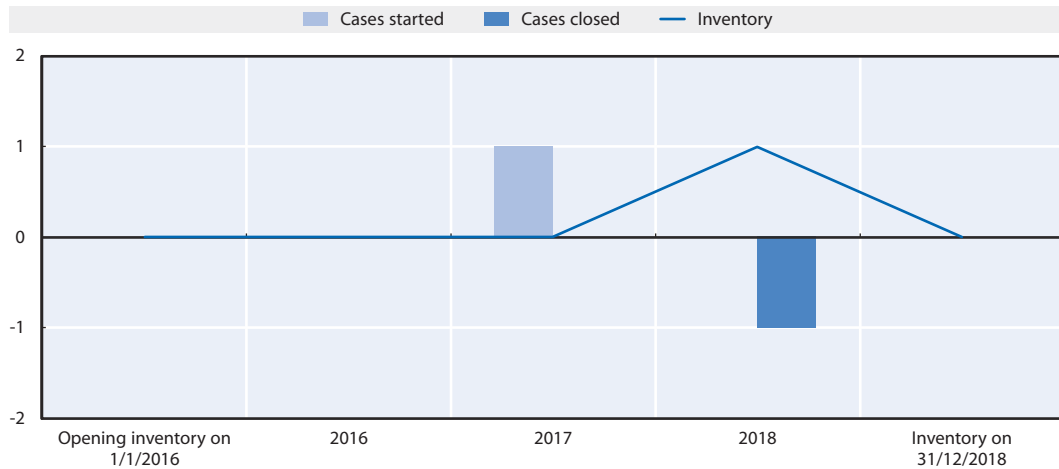
112. Due to the small number of cases, Jersey reported that it has no system in place for monitoring and managing its MAP caseload.

Analysis of Jersey’s MAP caseload

Global overview

113. Figure C.1 shows the evolution of Jersey’s MAP caseload over the Statistics Reporting Period.

Figure C.1. Evolution of Jersey’s MAP caseload



114. Throughout the Statistics Reporting Period, Jersey had only one MAP case in 2017, which was closed in 2018. Therefore, there were no MAP cases in Jersey’s period end inventory.

Pre-2016 cases

115. Jersey did not have any pre-2016 MAP case over the Statistics Reporting Period.

Post-2015 cases

116. As mentioned above, Jersey had one case started in 2017 that was closed in 2018.

Overview of cases closed during the Statistics Reporting Period

Reported outcomes

117. During the Statistics Reporting Period Jersey closed one post-2015 MAP case with the outcome “resolved via domestic remedies”. Jersey reported that full unilateral relief was provided by its treaty partner.

Average timeframe needed to resolve MAP cases

All cases closed during the Statistics Reporting Period

118. The time needed to close one MAP case during the Statistics Reporting Period was 6.50 months. It is shown as follows:

	Number of cases	Start date to End date (in months)
Attribution/Allocation cases	0	N/A
Other cases	1	6.50
All cases	1	6.50

Peer input

119. The peer that had a case with Jersey reported that this case involved an individual and that there was limited discussion with Jersey as the case was resolved by domestic remedies by this peer.

Anticipated modifications

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

Conclusion

	Areas for improvement	Recommendations
[C.2]	<p>Jersey submitted comprehensive MAP statistics on time on the basis of the MAP statistics Reporting Framework for the years 2016 and 2018. Based on the information provided by Jersey’s MAP partners, its post-2015 MAP statistics for these years actually match those of its treaty partners as reported by the latter.</p> <p>However, Jersey did not submit 2017 MAP statistics within the required timeline, but only during the course of its peer review. In that regard, Jersey is recommended to annually report MAP statistics.</p> <p>Jersey’s MAP statistics show that during the Statistics Reporting Period it closed one case post-2015 case in 6.50 months. In that regard, Jersey is recommended to seek to resolve future post-2015 cases within a timeframe that results in an average timeframe of 24 months.</p>	

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

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

121. 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 Jersey’s competent authority

122. Under Jersey’s tax treaties, the competent authority function is assigned to the Treasury and Resources Minister or his authorised representative. Jersey reported that this function has been delegated to the Director of International Tax Unit within Jersey’s tax authority as well as to the Comptroller and the Deputy Comptroller of Taxes within the Jersey tax administration. Jersey further reported that one of the deputy directors within International Tax Unit would also help the Director of International Tax Unit handle MAP cases. Due to the very small MAP caseload in Jersey, these people are primarily concerned with other tasks, such as treaty negotiations and exchanging information.

123. With respect to the experience of the people in charge of MAP cases in Jersey, Jersey reported that (i) the international tax director has 18 years’ experience in Jersey and international tax matters, and (ii) the deputy director was formerly a delegated competent authority in the United Kingdom with responsibility for reviewing transfer pricing and profit attribution cases. Jersey further reported that the deputy director is a qualified accountant and has attended the OECD’s MAP training course.

124. With respect to the funds available to the MAP function, Jersey reported that senior management of its tax authority has guaranteed that a budget would be made available if needed for dealing with MAP cases, for instance to be able to attend to face-to-face meetings.

Monitoring mechanism

125. Jersey reported that the monitoring and assessment of the adequacy of resources assigned to MAP is done through weekly management meetings with the international tax unit, fortnightly and monthly management meetings with senior management and bi-monthly updates to ministers. Jersey further reported that the metrics used to assess the adequacy of resources are the timeliness of responding to and resolving requests and whether sufficient technical resources exist to deal with individual requests.

126. Jersey further reported that in the past, this process has allowed rapid identification where further resources were required in order to respond to increasing international workload and swift allocation of additional funding and/or staff, for instance when Jersey experienced a marked increase in the number of requests for exchange of information on request. Jersey concluded that it is confident that the same model will prove effective for MAP.

Practical application

MAP statistics

127. As discussed under element C.2, Jersey closed one “other” MAP case during the Statistics Reporting Period within the pursued 24-month average. This case was closed in 6.50 months.

Peer input

128. Peers provided no specific input in relation to element C.3.

Anticipated modifications

129. Jersey indicated that it does not anticipate any modifications in relation to element C.3.

Conclusion

	Areas for improvement	Recommendations
[C.3]	-	Jersey 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.

130. 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

131. Jersey reported that staff in charge of MAP are not involved in tax audit work. It further clarified that if a MAP request was in respect of an adjustment made further to an audit performed in Jersey, the facts would be sought from the tax audit department. In other instances, Jersey reported that its competent authority may consult the tax technical unit of its tax administration who are also not involved in tax audits. Finally, Jersey reported that independent professional advice could be obtained if there would be a need for an expertise that is not available in its tax administration.

132. Despite the fact that there is some overlap between the competent authority and the people in charge of treaty negotiation, Jersey reported that, in practice, staff in involved in negotiating MAP agreements are not influenced by policy considerations reflecting what Jersey would like to see in future treaty amendments.

Practical application

133. Peers provided no specific input in relation to element C.4.

Anticipated modifications

134. Jersey indicated that it does not anticipate any modifications in relation to element C.4.

Conclusion

	Areas for improvement	Recommendations
[C.4]	-	Jersey 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 Jersey 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.

135. 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 Jersey

136. Jersey reported that staff in charge of MAP cases would be expected to be effective in their work and that any assessment of performance would take into account (i) technical judgement, (ii) whether internal procedures have been followed, (iii) the form and content of position papers and (iv) completion of cases within a reasonable period.

137. Jersey reported that it has set targets for staff in charge of MAP process to evaluate their work performance and these targets relate to the timeliness of resolving the MAP case within the framework set out in the Action 14 final report and compliance with all necessary notification obligations. Jersey reported that it follows these indicators on a weekly basis at management meetings within the international tax unit, at fortnightly and monthly senior management meetings and bi-monthly with ministers. Jersey further noted that the performance of its staff against targets are then used for quarterly performance reviews.

138. The Action 14 final report includes examples of performance indicators that are considered appropriate. These indicators are shown below and presented in the form of a checklist when they are indirectly used by Jersey:

- 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).

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

Practical application

140. Peers provided no specific input in relation to element C.5.

Anticipated modifications

141. Jersey indicated that it does not anticipate any modifications in relation to element C.5.

Conclusion

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

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

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

142. 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

143. Jersey reported that it has no domestic law limitations for including MAP arbitration in its tax treaties. However, Jersey reported that its model tax agreement does not include an article on arbitration, which Jersey explains by the fact that arbitration is not widely used by other jurisdictions and by the high potential costs of this process.

144. Jersey reported that it did not opt for part VI of the Multilateral Instrument, which includes a mandatory and binding arbitration provision.³ Jersey's MAP guidance contains a reference to arbitration, paragraph 3.10 of which notes that if at the end of two years the matter has not been resolved, the taxpayer may request the matter be resolved by arbitration if the relevant tax treaty allows it.

Practical application

145. To date, Jersey has incorporated an arbitration clause in eight of 29 treaties as a final stage to the MAP. These clauses can be specified as follows:

- equivalent of Article 25(5) of the OECD Model Tax Convention: six treaties
- voluntary and binding arbitration: two treaties.

Anticipated modifications

146. Jersey indicated that it does not anticipate any modifications in relation to element C.6.

Conclusion

	Areas for improvement	Recommendations
[C.6]	-	-

Notes

1. Available at: www.oecd.org/tax/dispute/mutual-agreement-procedure-statistics.htm. These statistics are up to and include the year 2017.
2. For post-2015 cases, if the number of MAP cases in Jersey’s inventory at the beginning of the Statistics Reporting Period plus the number of MAP cases started during the Statistics Reporting Period was more than five, Jersey reports its MAP caseload on a jurisdiction-by-jurisdiction basis. This rule applies for each type of cases (attribution/allocation cases and other cases).
3. An overview of Jersey’s position on the Multilateral Instrument is available at: www.oecd.org/tax/treaties/beps-mli-position-jersey-instrument-deposit.pdf.

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-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.

147. 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

148. Jersey reported that its domestic time limits expire five years after the end of the relevant year of assessment. It further reported that MAP agreements would be honoured notwithstanding any time limits provided this is permitted by the relevant tax treaty. Section 3.7 of Jersey’s MAP guidance states that Jersey will give effect to any adjustment and penalties notwithstanding any time limits under Jersey’s domestic law. In the absence of a provision equivalent to Article 25(2), second sentence of the OECD Model Tax Convention, Jersey reported that its domestic time limits would apply.

149. Jersey’s MAP guidance further clarifies that the taxpayer’s consent is requested after a mutual agreement is reached by Jersey’s competent authority.

Practical application

150. Jersey reported that it has not reached any MAP agreements since 1 January 2016, which can also be explained by its very small caseload. Jersey confirms it would monitor the implementation of future MAP agreements.

151. Peers provide no specific input in relation to element D.1.

Anticipated modifications

152. Jersey 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 Jersey would have implemented all MAP agreements thus far.	
[D.1]	As will be discussed under element D.3, not all of Jersey's tax treaties contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention. Therefore, there is a risk that for those tax treaties that do not contain that provision, not all MAP agreements will be implemented due to time limits in its domestic law.	When, after a MAP case is initiated, the domestic statute of limitation may, in the absence of the second sentence of Article 25(2) of the OECD Model Tax Convention in an assessed jurisdiction's relevant tax treaty, prevent the implementation of a MAP agreement, Jersey should put appropriate procedures in place to ensure that such an agreement is implemented. In addition, where during the MAP process the domestic statute of limitations may expire and may then affect the possibility to implement a MAP agreement, Jersey should for clarity and transparency purposes notify the treaty partner thereof without delay.

[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.

153. 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

154. Jersey reported that the implementation of mutual agreements would follow the following theoretical timeframe: its competent authority would inform the office responsible for implementing the agreement and require implementation be made within two months.

Practical application

155. As discussed under element D.1, Jersey has not reached any MAP agreements since 1 January 2016. Jersey reported it would expect to implement MAP agreements within two months of the taxpayer giving consent to the MAP proposals and this timeline is documented in its internal guidance.

156. Peers provide no specific input in relation to element D.2.

Anticipated modifications

157. Jersey indicated that it does not anticipate any modifications in relation to element D.2.

Conclusion

	Areas for improvement	Recommendations
[D.2]	As there was no MAP agreement reached during the Review Period that needed to be implemented in Jersey, it was not yet possible to assess whether Jersey 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.

158. 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 Jersey's tax treaties

159. As discussed under element D.1, Jersey's domestic legislation includes a statute of limitations of five years for implementing MAP agreements, unless overridden by tax treaties.

160. Out of Jersey's 29 tax treaties, 26 treaties 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 domestic law. The remaining three treaties do not contain any provision based on Article 25(2), second sentence, of the OECD Model Tax Convention.

Anticipated modifications

Multilateral Instrument

161. Jersey signed the Multilateral Instrument, which it ratified it on 15 December 2017. Article 16(4)(b)(ii) of that instrument stipulates that Article 16(2), second sentence – containing the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention – will apply in the absence of a provision in tax treaties that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention. In other words, in the absence of this equivalent, Article 16(4)(b)(ii) of the Multilateral Instrument will modify the applicable tax treaty to include such equivalent. However, this shall only apply if both contracting parties to the applicable tax treaty have listed this treaty as a covered tax agreement under the Multilateral Instrument and insofar as both, pursuant to Article 16(6)(c)(ii), notified the depositary that this treaty does not contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention. Article 16(4)(b)(ii) of the Multilateral Instrument will for a tax treaty not take effect if one or both of the treaty partners has, pursuant to Article 16(5)(c), reserved the right not to apply the second sentence of Article 16(2) of that instrument for all of its covered tax agreements under the condition that: (i) any MAP agreement shall be implemented notwithstanding any time limits in the domestic laws of the contracting states, or (ii) the jurisdiction intends to meet the Action 14 Minimum Standard by accepting in its tax treaties the alternative provisions to Article 9(1) and 7(2) concerning the introduction of a time limit for making transfer pricing profit adjustments.

162. In regard of the three tax treaties identified above that are considered not to contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention or the alternative provisions for Articles 9(1) and 7(2), Jersey listed none of these treaties as covered tax agreements under the Multilateral Instrument. Therefore, at this stage, none of these treaties have been or will be modified by the Multilateral Instrument to include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention.

Bilateral modifications

163. Jersey reported that the tax treaties neither containing the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention or both alternatives provided for in Articles 9(1) and 7(2) nor being modified by the Multilateral Instrument, it intends to update them to be compliant with element D.3 via bilateral negotiations. In this regard, Jersey reported that it contacted all relevant treaty partners to include the required provision in its treaties in January 2018. In addition, Jersey reported it will seek to include Article 25(2), second sentence, of the OECD Model Tax Convention or both alternatives in all of its future tax treaties.

Peer input

164. For the three tax treaties identified that do not contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention, or both alternatives, one of the relevant peers reported that Jersey approached this peer regarding tax treaty negotiations in the first half of 2018. The other peers did not provide input.

Conclusion

	Areas for improvement	Recommendations
[D.3]	Three out of 29 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). These three treaties are not expected to be modified by the Multilateral Instrument.	As the three treaties that do not contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention or both alternative provisions will not be modified via the Multilateral Instrument, Jersey should follow up on its requests for the inclusion of the required provision via bilateral negotiations or be willing to accept the inclusion of both alternative provisions. In addition, Jersey 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.

Reference

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]	Three out of 29 tax treaties do not contain a provision that is equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention. These three treaties will not be modified by the Multilateral Instrument to include the required provision. With respect to these treaties, Jersey has reached out to its treaty partners to request the initiation of bilateral negotiations.	As the three treaties that do not contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention will not be modified via the Multilateral Instrument, Jersey should follow up on its requests for the inclusion of the required provision via bilateral negotiations. In addition, Jersey 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]	Three out of 29 tax treaties do not contain a provision that is equivalent to Article 25(1), first sentence of the OECD Model Tax Convention. Since these treaties will not be modified by the Multilateral Instrument to include the required provision, Jersey has asked these treaty partners to commence bilateral negotiations to renegotiate this article.	As the three treaties that do not contain the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention will not be modified by the Multilateral Instrument to include such equivalent, Jersey should follow up on its request for the inclusion of the required provision via bilateral negotiations. This concerns a provision that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention, either: <ul style="list-style-type: none"> • as amended in the Action 14 final report; or • as it read prior to the adoption of the Action 14 final report, thereby including the full sentence of such provision. In addition, Jersey 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.
	Where tax treaties do not include a time limit for submission of a MAP request, applicable rules under domestic legislation may lead to a filing period of less than three years as from the first notification of the action resulting in taxation not in accordance with the provisions of a tax treaty.	Jersey should ensure that where its domestic time limits apply for filing of MAP requests, in the absence of a provision hereon in its tax treaties, such time limits do not prevent taxpayers from having access to MAP if a request thereto is made within a period of three years as from the first notification of the action resulting in taxation not in accordance with the provisions of a tax treaty.
[B.2]	There is a documented process in place to consult the other competent authority in cases where the objection raised in the MAP request was considered as being not justified. However, it was not possible to assess whether the consultation process is applied in practice because during the Review Period no such cases have occurred.	
[B.3]	Jersey reported that it will give access to MAP in transfer pricing cases. Its competent authority, however, did not receive any MAP requests for such cases during the Review Period. Jersey is therefore recommended to follow its policy and grant access to MAP in such cases.	

	Areas for improvement	Recommendations
[B.4]	Jersey 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. Jersey is therefore recommended to follow its policy and grant access to MAP in such cases.	
[B.5]	Jersey 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. Jersey is therefore recommended to follow its policy and grant access to MAP when such cases surface.	
[B.6]	Jersey reported it will give access to MAP in cases where taxpayers have complied with Jersey's information and documentation requirements for MAP requests. Its competent authority, however, did not receive any MAP requests from taxpayers during the Review Period. Jersey 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]	-	Jersey should maintain its stated intention to include the required provision in all future tax treaties.
[B.8]	-	Although not required by the Action 14 Minimum Standard, in order to further improve the level of details of its MAP guidance Jersey could follow its stated intention to consider including the items listed above.
[B.9]	-	As it has thus far made its MAP guidance available and easily accessible and published its MAP profile, Jersey 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]	Four out of 29 tax treaties do not contain a provision that is equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention. These four treaties will not be modified by the Multilateral Instrument to include the required provision. With respect to these treaties, Jersey has reached out to its treaty partners to request the initiation of bilateral negotiations.	As the four treaties that do not contain the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention will not be modified via the Multilateral Instrument, Jersey should follow up on its requests for the inclusion of the required provision via bilateral negotiations. In addition, Jersey should maintain its stated intention to include the required provision in all future tax treaties.
[C.2]	Jersey submitted comprehensive MAP statistics on time on the basis of the MAP statistics Reporting Framework for the years 2016 and 2018. Based on the information provided by Jersey's MAP partners, its post-2015 MAP statistics for these years actually match those of its treaty partners as reported by the latter. However, Jersey did not submit 2017 MAP statistics within the required timeline, but only during the course of its peer review. In that regard, Jersey is recommended to annually report MAP statistics. Jersey's MAP statistics show that during the Statistics Reporting Period it closed one case post-2015 case in 6.50 months. In that regard, Jersey is recommended to seek to resolve future post-2015 cases within a timeframe that results in an average timeframe of 24 months.	
[C.3]	-	Jersey 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.

	Areas for improvement	Recommendations
[C.4]	-	Jersey 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 Jersey would like to see reflected in future amendments to the treaty.
[C.5]	-	As it has done thus far, Jersey should continue to use appropriate performance indicators.
[C.6]	-	-
Part D: Implementation of MAP agreements		
	As there was no MAP agreement reached during the Review Period, it was not yet possible to assess whether Jersey would have implemented all MAP agreements thus far.	
[D.1]	As will be discussed under element D.3, not all of Jersey's tax treaties contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention. Therefore, there is a risk that for those tax treaties that do not contain that provision, not all MAP agreements will be implemented due to time limits in its domestic law.	When, after a MAP case is initiated, the domestic statute of limitation may, in the absence of the second sentence of Article 25(2) of the OECD Model Tax Convention in an assessed jurisdiction's relevant tax treaty, prevent the implementation of a MAP agreement, Jersey should put appropriate procedures in place to ensure that such an agreement is implemented. In addition, where during the MAP process the domestic statute of limitations may expire and may then affect the possibility to implement a MAP agreement, Jersey should for clarity and transparency purposes notify the treaty partner thereof without delay.
[D.2]	As there was no MAP agreement reached during the Review Period that needed to be implemented in Jersey, it was not yet possible to assess whether Jersey would have implemented all MAP agreements on a timely basis thus far.	
[D.3]	Three out of 29 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). These three treaties are not expected to be modified by the Multilateral Instrument.	As the three treaties that do not contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention or both alternative provisions will not be modified via the Multilateral Instrument, Jersey should follow up on its requests for the inclusion of the required provision via bilateral negotiations or be willing to accept the inclusion of both alternative provisions. In addition, Jersey 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 Jersey

Column 1	Column 2	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
Australia	Y	N	iv	N/A	i	N	N	N	N	N
Cyprus ^a	Y	O*	Y	Y	i	Y	Y	Y	Y	Y
Denmark	Y	O	Y	Y	i	Y	Y	Y	N	N
Estonia	Y	O*	Y	Y	i	Y	Y	Y	Y	N
Faroe Islands	Y	O	Y	Y	i	Y	Y	Y	N	N
Finland	Y	O	Y	Y	i	Y	Y	Y	N	N
France	Y	N	i	N/A	i	N	N	Y	N	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?
Germany	Y	O	Y	i	i	Y	Y	N	N	N
Greenland	Y	O	Y	Y	i	Y	Y	Y	N	N
Guernsey	Y	O	Y	Y	i	Y	Y	Y	Y	Y
Hong Kong (China)	Y	O*	Y	Y	i	Y	Y	Y	Y	Y
Iceland	Y	O	Y	Y	i	Y	Y	Y	N	N
Ireland	Y	O	Y	i	i	N	Y	Y	N	N
Isle of Man	Y	O	Y	Y	i	Y	Y	Y	Y	Y
Japan	Y	O	Y	N/A	i	Y	Y	Y	N	N
Liechtenstein	Y	E	Y	Y	i	Y	Y	Y	Y	Y
Luxembourg	Y	E*	Y	Y	i	Y	Y	Y	Y	Y
Malta	Y	E*	Y	Y	i	Y	Y	Y	Y	N
Mauritius	Y	O	Y	Y	i	Y	Y	Y	Y	N
New Zealand	Y	N	iv	N/A	i	N	N	N	N	N
Norway	Y	O	Y	Y	i	Y	Y	Y	N	N
Poland	Y	O	Y	N/A	i	Y	Y	Y	Y	N
Qatar	Y	O*	ii*	i	i	Y	Y	Y	Y	N
Rwanda	Y	O	Y	Y	i	Y	Y	Y	Y	Y
Seychelles	Y	O*	Y	i	i	Y	Y	Y	Y	N
Singapore	Y	O	Y	Y	i	Y	Y	Y	Y	N
Sweden	Y	O	Y	Y	i	Y	Y	Y	N	N

Column 1	Column 2	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?
United Arab Emirates	Y	O*	Y	Y	i	Y	Y	Y	Y	N
United Kingdom	Y	E	Y	Y	i	Y	Y	Y	Y	Y

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

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

Legend

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

- i**/iv**/N** The provision contained in this treaty is not in line with the requirements under this element of the Action 14 Minimum Standard, but the treaty will be superseded by the Multilateral Instrument upon entry into force for this specific treaty only to the extent that existing treaty provisions are incompatible with the relevant provision of the Multilateral Instrument.
- i*** The provision contained in this treaty is not in line with the requirements under this element of the Action 14 Minimum Standard, but the treaty will be superseded by the Multilateral Instrument only to the extent that existing treaty provisions are incompatible with the relevant provision of the Multilateral Instrument.

Annex B

MAP statistics 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	1	0	0	0	0	0	0	0	0	0	0	1	N/A
Total	0	1	0	0	0	0	0	0	0	0	0	0	1	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	1	0	0	0	0	0	1	0	0	0	0	0	0	6.50
Total	1	0	0	0	0	0	1	0	0	0	0	0	0	6.50

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	“Resolving treaty disputes: The Mutual Agreement Procedure” published on the website of the government of Jersey
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 March 2019
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, Jersey (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 Jersey.

Consult this publication on line at <https://doi.org/10.1787/5c130270-en>.

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